

17 Am. Jur. 2d Consumer Protection One I A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

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Consumer and Borrower Protection

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1. In General

§ 1. Generally

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[Validity, Construction, and Application of Truth in Lending Act \(TILA\) and Regulations Promulgated Thereunder—United States Supreme Court Cases](#), 67 A.L.R. Fed. 2d 567

[Preemptive Effect of Truth in Lending Act \(TILA\)](#), 61 A.L.R. Fed. 2d 505

Because credit has become a way of life for consumers, and their need for protection in that area is great, some of the most important protective efforts in the field of consumer protection in recent years relate to consumer credit protection.¹

The Truth in Lending Act² consists of the first five chapters of the Consumer Credit Protection Act. These chapters set forth general provisions³ and deal with credit transactions,⁴ credit advertising and limits on credit card fees,⁵ credit billing,⁶ and consumer leases.⁷

The Truth in Lending Act is a disclosure statute⁸ rather than a regulatory statute;⁹ it does not substantively regulate consumer credit but, rather, requires disclosure of certain terms and conditions of credit before consummation of a consumer credit

transaction.¹⁰ The Act was designed to promote consumers' informed use of credit by requiring the meaningful disclosure of credit terms.¹¹ The Act is not a general prohibition of fraud in consumer transactions or even in consumer credit transactions; rather, its limited office is to protect consumers from being misled about the cost of credit.¹² Thus, the Act does not provide a cause of action when the lender engages in "bait and switch" techniques but only requires that the lender make certain disclosures with respect to the offered terms.¹³

When it enacted the Truth in Lending Act, Congress acted within the power granted to it under the Commerce Clause of the United States Constitution.¹⁴ Moreover, the mere fact that judicial interpretations of the Act may be inconsistent does not render the Act unconstitutional on the theory that it is vague and thus violates due process.¹⁵

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Footnotes

- 1 U.S. v. Biancofiori, 422 F.2d 584, 7 A.L.R. Fed. 944 (7th Cir. 1970); Jordan v. Montgomery Ward & Co., 442 F.2d 78, 11 A.L.R. Fed. 808 (8th Cir. 1971).
- 2 15 U.S.C.A. §§ 1601 to 1667f.
- 3 15 U.S.C.A. §§ 1601 to 1616.
- 4 15 U.S.C.A. §§ 1631 to 1651.
As to 15 U.S.C.A. §§ 1642 to 1645, see Am. Jur. 2d, Credit Cards and Charge Accounts §§ 9 to 17, 38 to 44.
- 5 15 U.S.C.A. §§ 1661 to 1665e.
As to 15 U.S.C.A. §§ 1665c to 1665e, pertaining to credit cards, see Am. Jur. 2d, Credit Cards and Charge Accounts § 4.
- 6 15 U.S.C.A. §§ 1666 to 1666j.
- 7 15 U.S.C.A. §§ 1667 to 1667f.
- 8 Szumny v. American General Finance, 246 F.3d 1065 (7th Cir. 2001).
- 9 Turner v. General Motors Acceptance Corp., 180 F.3d 451 (2d Cir. 1999).
- 10 Rendler v. Corus Bank, 272 F.3d 992 (7th Cir. 2001).
- 11 § 3.
- 12 Haynes v. Planet Automall, Inc., 276 F.R.D. 65 (E.D. N.Y. 2011).
- 13 Clark v. Troy and Nichols, Inc., 864 F.2d 1261 (5th Cir. 1989).
- 14 Mourning v. Family Publications Service, Inc., 411 U.S. 356, 93 S. Ct. 1652, 36 L. Ed. 2d 318 (1973).
- 15 Franklin v. First Money, Inc., 427 F. Supp. 66 (E.D. La. 1976), judgment aff'd, 599 F.2d 615 (5th Cir. 1979).

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[What constitutes "finance charge" under sec. 106\(a\) of the Truth in Lending Act \(15 U.S.C.A. sec. 1605\(a\)\) or applicable regulations, 154 A.L.R. Fed. 431](#)

The Truth in Lending Act contains extensive definitions of the terms used therein.¹ One of the terms of general application is the term "Bureau," which means the Bureau of Consumer Financial Protection,² the agency to which the administrative functions originally handled by the Board of Governors of the Federal Reserve System were transferred in 2010. A "person" means a natural person or an organization.³ An "organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.⁴ The definition of "open-end credit plan" and "open-end consumer credit plan" specifies that the plan must be one under which the creditor "reasonably contemplates" repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance.⁵ The term "creditor" is defined to mean only a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt

arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement.⁶ The term "state" refers to any state, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.⁷ Other terms are also defined, such as "adequate notice,"⁸ "credit,"⁹ "credit sale,"¹⁰ "credit card,"¹¹ "accepted credit card,"¹² "cardholder,"¹³ "consumer,"¹⁴ "card issuer,"¹⁵ "unauthorized use,"¹⁶ "discount,"¹⁷ "surcharge,"¹⁸ "agricultural purposes,"¹⁹ "agricultural products,"²⁰ "material disclosures,"²¹ "dwelling,"²² "residential mortgage transaction,"²³ and "regular price."²⁴

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Footnotes

1 15 U.S.C.A. § 1602(b) to (y).

2 15 U.S.C.A. § 1602(b).

3 15 U.S.C.A. § 1602(e).

4 15 U.S.C.A. § 1602(d).

5 15 U.S.C.A. § 1602(j).

6 15 U.S.C.A. § 1602(g), discussed further in §§ 8 to 11.

7 15 U.S.C.A. § 1602(s).

8 15 U.S.C.A. § 1602(k).

9 15 U.S.C.A. § 1602(f).

As used in the provision of the Truth in Lending Act defining "credit," the term "debt" should be construed as it is defined in the Fair Debt Collection Practices Act. *Pollice v. National Tax Funding, L.P.*, 225 F.3d 379 (3d Cir. 2000).

"Credit," as that term is used in the Truth in Lending Act, does not include court judgments or orders; thus, the Act does not apply to debt created by a court order requiring one party to pay another's fees and costs, or to a related payment plan ordered by the court or worked out by the parties, since such are not consumer credit transactions. *Bonfiglio v. Nugent*, 986 F.2d 1391, 25 Fed. R. Serv. 3d 82 (11th Cir. 1993).

10 § 12.

11 15 U.S.C.A. § 1602(l).

12 15 U.S.C.A. § 1602(m).

13 15 U.S.C.A. § 1602(n).

14 § 7.

15 15 U.S.C.A. § 1602(o).

16 15 U.S.C.A. § 1602(p).

17 15 U.S.C.A. § 1602(q).

18 15 U.S.C.A. § 1602(r).

19 15 U.S.C.A. § 1602(t).

20 15 U.S.C.A. § 1602(u).

21 15 U.S.C.A. § 1602(v).

22 15 U.S.C.A. § 1602(w).

23 15 U.S.C.A. § 1602(x).

24 15 U.S.C.A. § 1602(y).

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§ 3. Purpose, construction, and application

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[Validity, Construction, and Application of Truth in Lending Act \(TILA\) and Regulations Promulgated Thereunder—United States Supreme Court Cases](#), 67 A.L.R. Fed. 2d 567

[Application of Truth in Lending Act \(15 U.S.C.A. secs. 1601 et seq.\) to loans which are void under state laws](#), 54 A.L.R. Fed. 822

The purpose of the Truth in Lending Act is to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him or her and avoid the uninformed use of credit and to protect the consumer against inaccurate and unfair credit billing and credit card practices.¹ The Act is designed to remedy problems caused by ignorance of the nature of credit obligations and costs and by divergent and sometimes fraudulent practices with regard to information as to credit terms, as a result of which many consumers have been prevented from shopping for the best credit terms available and, at times, have been prompted to assume burdensome liabilities.² An important goal of the Act is to allow a consumer to shop intelligently for a loan and to compare one proposed loan to another, based on disclosures cast in a consistent manner.³

The Truth in Lending Act is a remedial statute⁴ designed to protect consumers in credit transactions,⁵ and as such, it should be liberally construed in favor of the consumer⁶ and strictly enforced⁷ against the creditor.⁸

Observation:

The requisite strict compliance with the requirements of the Truth in Lending Act does not necessarily mean punctilious compliance if, with minor deviations from the language of the Act, there is still a substantial, clear disclosure of the fact or information demanded by the applicable statute or regulation.⁹

Interpretation of the Act and its implementing regulation demands an examination of their express language, and it is necessary to consider the implicit character of the statutory scheme.¹⁰ Absent a clear indication of legislative intent to the contrary, the statutory language controls construction of the Act.¹¹

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Footnotes

- 1 15 U.S.C.A. § 1601(a).
- 2 *Mourning v. Family Publications Service, Inc.*, 411 U.S. 356, 93 S. Ct. 1652, 36 L. Ed. 2d 318 (1973).
- 3 *Taylor v. Homecomings Financial, LLC*, 738 F. Supp. 2d 1257 (N.D. Fla. 2010).
- 4 *Ramadan v. Chase Manhattan Corp.*, 156 F.3d 499 (3d Cir. 1998); *Inge v. Rock Financial Corp.*, 281 F.3d 613, 52 Fed. R. Serv. 3d 119, 2002 FED App. 0073P (6th Cir. 2002).
- 5 *Pfennig v. Household Credit Services, Inc.*, 295 F.3d 522, 2002 FED App. 0219A (6th Cir. 2002), *rev'd on other grounds*, 541 U.S. 232, 124 S. Ct. 1741, 158 L. Ed. 2d 450 (2004); *Geiger v. Crestar Bank*, 778 A.2d 1085 (D.C. 2001).
- 6 *Rossman v. Fleet Bank (R.I.) Nat. Ass'n*, 280 F.3d 384 (3d Cir. 2002); *Inge v. Rock Financial Corp.*, 281 F.3d 613, 52 Fed. R. Serv. 3d 119, 2002 FED App. 0073P (6th Cir. 2002); *Jenkins v. Eastover Bank for Sav.*, 606 So. 2d 105 (Miss. 1992).
- 7 *Fairley v. Turan-Foley Imports, Inc.*, 65 F.3d 475, 27 U.C.C. Rep. Serv. 2d 723 (5th Cir. 1995); *GAC Finance Corp. of Spokane v. Burgess*, 16 Wash. App. 758, 558 P.2d 1386 (Div. 3 1977).
- 8 *Fairley v. Turan-Foley Imports, Inc.*, 65 F.3d 475, 27 U.C.C. Rep. Serv. 2d 723 (5th Cir. 1995).
- 9 *Hawaii Community Federal Credit Union v. Keka*, 94 Haw. 213, 11 P.3d 1 (2000).
- 10 *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 100 S. Ct. 790, 63 L. Ed. 2d 22 (1980).
- 11 *Ford Motor Credit Co. v. Cenance*, 452 U.S. 155, 101 S. Ct. 2239, 68 L. Ed. 2d 744 (1981).

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West's Key Number Digest, [Consumer Credit](#)  30, 32

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[Validity, Construction, and Application of Truth in Lending Act \(TILA\) and Regulations Promulgated Thereunder—United States Supreme Court Cases, 67 A.L.R. Fed. 2d 567](#)

[Civil remedies of consumer for violations of credit transactions provisions of Truth in Lending Act \(TILA\) \(15 U.S.C.A. secs. 1601 et seq.\), as amended by Truth in Lending Simplification and Reform Act of 1982, 113 A.L.R. Fed. 173](#)

The Bureau of Consumer Financial Protection is required by the Truth in Lending Act to prescribe regulations to carry out the purposes of the Act.¹ Generally, such regulations may contain such classifications, differentiations, or other provisions and may provide for such adjustments and exceptions for any class of transactions as in the judgment of the Bureau are necessary or proper to effectuate the purposes of the Act, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.² The specific authorization to the Bureau to promulgate regulations containing classifications empowers it to define such classifications as are reasonably necessary to insure that the objectives of the Act are fulfilled, no matter what adroit or unscrupulous practices are employed by creditors.³

Observation:

In amending a provision of the Truth in Lending Act, Congress does not have to expressly address any regulatory language that it intends to supersede by amendment; rather, it is the agency's responsibility to conform its rules to any pertinent new laws.⁴

The Bureau has adopted an implementing regulation, generally known as Regulation Z.⁵ Absent some obvious repugnance to the Act, the Bureau's implementing regulations should be accepted by the courts,⁶ and any analysis of a Truth in Lending Act issue should include Regulation Z and its official commentaries.⁷ Regulation Z may be relied upon by creditors for protection from any civil or criminal liability under the Truth in Lending Act.⁸

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Footnotes

- 1 [15 U.S.C.A. § 1604\(a\)](#).
Any reference to any requirement imposed under the Truth in Lending Act or any provision thereof includes reference to the regulations of the Bureau under the Act or the provisions thereof in question. [15 U.S.C.A. § 1602\(z\)](#).
- 2 [15 U.S.C.A. § 1604\(a\)](#).
Although the Bureau of Consumer Financial Protection has been given broad authority in prescribing regulations to carry out the purposes of the Truth in Lending Act, this authority is not without limits and is confined to efforts to effectuate the purpose of the Act, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. [Pfennig v. Household Credit Services, Inc.](#), 295 F.3d 522, 2002 FED App. 0219A (6th Cir. 2002), rev'd on other grounds, 541 U.S. 232, 124 S. Ct. 1741, 158 L. Ed. 2d 450 (2004) (referring to the Federal Reserve Board, formerly responsible for administering the Act).
- 3 [Mourning v. Family Publications Service, Inc.](#), 411 U.S. 356, 93 S. Ct. 1652, 36 L. Ed. 2d 318 (1973).
- 4 [Taylor v. Quality Hyundai, Inc.](#), 150 F.3d 689 (7th Cir. 1998).
- 5 [12 C.F.R. §§ 1026.1 et seq.](#)
As to the consumer lease provisions of the Act implemented by [12 C.F.R. §§ 1013.1 et seq.](#), also known as Regulation M, see [§ 100](#).
- 6 [Anderson Bros. Ford v. Valencia](#), 452 U.S. 205, 101 S. Ct. 2266, 68 L. Ed. 2d 783 (1981).
In light of the explicit delegation of congressional authority to the Bureau of Consumer Financial Protection under the Truth in Lending Act, a party contesting the validity of a regulation defining "credit sale" had to convince the court of appeals that the regulation was demonstrably irrational. [Ortiz v. Rental Management, Inc.](#), 65 F.3d 335 (3d Cir. 1995) (referring to the Federal Reserve Board, formerly responsible for administering the Act).
- 7 [Beach v. Great Western Bank](#), 692 So. 2d 146 (Fla. 1997), judgment aff'd, 523 U.S. 410, 118 S. Ct. 1408, 140 L. Ed. 2d 566 (1998).
- 8 [Iannuzzi v. American Mortg. Network, Inc.](#), 727 F. Supp. 2d 125 (E.D. N.Y. 2010).

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Generally, regulations promulgated by a governmental body responsible for interpreting or administering a statute are entitled to considerable respect, and this is particularly true under the Truth in Lending Act.¹ In actions under the Truth in Lending Act, courts defer to regulations interpreting the Act.²

The courts should, as a rule, accept the Bureau of Consumer Financial Protection's interpretation of its own regulations.³ Hence, opinion letters of the Bureau staff are entitled to great deference where they are not in conflict with each other and state reasonable conclusions.⁴ An official commentary to Regulation Z is regarded as an authoritative interpretation of the Truth in Lending Act and Regulation Z,⁵ and may warrant deference as a general matter,⁶ and Bureau staff opinions construing the Truth in Lending Act or its implementing regulation should be dispositive unless they are "demonstrably irrational."⁷

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Footnotes

- 1 [Ford Motor Credit Co. v. Cenance](#), 452 U.S. 155, 101 S. Ct. 2239, 68 L. Ed. 2d 744 (1981).
- 2 [Begala v. PNC Bank, Ohio, Nat. Ass'n](#), 163 F.3d 948, 1998 FED App. 0378P (6th Cir. 1998), as amended, (Mar. 26, 1999).
Because the Bureau of Consumer Financial Protection is the agency charged with administration of the Truth in Lending Act, courts accord its regulation deference. [Szumny v. American General Finance](#), 246 F.3d 1065 (7th Cir. 2001) (referring to the Federal Reserve Board, formerly responsible for administering the Act).
- 3 [Anderson Bros. Ford v. Valencia](#), 452 U.S. 205, 101 S. Ct. 2266, 68 L. Ed. 2d 783 (1981) (referring to the Federal Reserve Board, formerly responsible for administering the Act).
- 4 [Charles v. Krauss Co., Ltd.](#), 572 F.2d 544, 50 A.L.R. Fed. 192 (5th Cir. 1978) (referring to the Federal Reserve Board, formerly responsible for administering the Act).
- 5 [Rendler v. Corus Bank](#), 272 F.3d 992 (7th Cir. 2001).
- 6 [Chase Bank USA, N.A. v. McCoy](#), 131 S. Ct. 871, 178 L. Ed. 2d 716, 67 A.L.R. Fed. 2d 721 (2011).
- 7 [Ford Motor Credit Co. v. Milhollin](#), 444 U.S. 555, 100 S. Ct. 790, 63 L. Ed. 2d 22 (1980) (referring to the Federal Reserve Board, formerly responsible for administering the Act); [Parrish v. Blazer Financial Services, Inc.](#), 868 So. 2d 406 (Ala. 2003) (referring to the Federal Reserve Board, formerly responsible for administering the Act).

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[Application of Truth in Lending Act \(15 U.S.C.A. secs. 1601 et seq.\) to loans which are void under state laws, 54 A.L.R. Fed. 822](#)

The extent to which the Truth in Lending Act applies to particular persons or transactions is governed by the definitions supplied by the Act.¹ A basic definition is of the term "credit," which means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.²

Observation:

A law firm did not extend "credit" to clients as would subject the firm to Truth in Lending Act requirements where the firm's clients did not have the right to defer payment of debt.³

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Footnotes

- 1 [Hahn v. Hank's Ambulance Service, Inc., 787 F.2d 543 \(11th Cir. 1986\).](#)
- 2 [15 U.S.C.A. § 1602\(f\).](#)
"Credit," as used in the Truth in Lending Act, manifestly did not include court judgments or orders; thus, a former husband's court-ordered obligation to pay sums to his former wife's law firm and the resulting installment plans offered by the law firm were not consumer "credit" transactions within the meaning of the Act. [Bonfiglio v. Nugent, 986 F.2d 1391, 25 Fed. R. Serv. 3d 82 \(11th Cir. 1993\).](#)
- 3 [Riethman v. Berry, 287 F.3d 274 \(3d Cir. 2002\).](#)

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§ 7. Consumers; consumer credit

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Forms

Forms relating to defense of debtor not being a "consumer", see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection [\[Westlaw® Search Query\]](#)

One of the purposes of the Truth in Lending Act is the protection of credit consumers.¹ The Act provides that the adjective "consumer," used with reference to a credit transaction, characterizes the transaction as one in which: (1) the party to whom

credit is offered or extended is a natural person; and (2) the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes.²

Observation:

Whether an investment loan is for a personal or business purpose requires a case-by-case analysis.³

The term "consumer credit" is not defined in the Act itself, but the implementing regulation defines such term as credit offered or extended to a consumer primarily for personal, family, or household purposes.⁴ In every "consumer credit" transaction, two elements must be present: the party to whom the credit is extended must be a natural person, and the money, property, or services received by that person must be primarily for personal, family, or household purposes.⁵

Observation:

"Consumer credit transactions" arose, for purposes of the Truth in Lending Act, when homeowners entered into payment plans with the assignee of their delinquent water and sewer obligations in that the assignee extended credit to the homeowners by deferring payment of debt for services provided for personal, family, or household use.⁶

The Truth in Lending Act recognizes two general types of consumer credit transactions, open-end credit and closed-end credit, and provides different disclosure requirements for each.⁷

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Footnotes

- ¹ § 3.
- ² 15 U.S.C.A. § 1602(i).
A Chapter 13 debtor-mortgagor, who granted a prepetition mortgage on her house to a bank to secure a loan for her nephew, was a Truth in Lending Act "consumer" with the right to rescind and, thus, was entitled to receive disclosures as to the amount financed, finance rate, and finance charges. *In re Soto*, 221 B.R. 343 (Bankr. E.D. Pa. 1998).
- ³ As to exemption for business or commercial transactions, see § 14.
Thorns v. Sundance Properties, 726 F.2d 1417 (9th Cir. 1984).
- ⁴ 12 C.F.R. § 1026.2(a)(12).

- 5 *American Exp. Co. v. Koerner*, 452 U.S. 233, 101 S. Ct. 2281, 68 L. Ed. 2d 803 (1981).
6 *Pollice v. National Tax Funding, L.P.*, 225 F.3d 379 (3d Cir. 2000).
7 *Rendler v. Corus Bank*, 272 F.3d 992 (7th Cir. 2001).

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§ 8. Creditors

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  33.1

A.L.R. Library

[Who is "creditor" within meaning of s103\(f\) of Truth in Lending Act \(15 U.S.C.A. s1602\(f\)\), 157 A.L.R. Fed. 419](#)

Forms

Forms relating to defendant exempt from statute because not a "creditor", see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection [[Westlaw® Search Query](#)]

Under the Truth in Lending Act, the term "creditor" refers to a person who: (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments, or for which the payment of a finance charge is or may be required; and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence, by

agreement.¹ Thus, whether one is a creditor under the Truth in Lending Act is a bifurcated question, requiring a person both to be a "creditor" in general, by extending credit in a certain minimum number of transactions, and to be the "creditor" in the specific transaction in dispute.²

Observation:

Absent evidence that a mortgage broker regularly extended consumer credit or was the "person" to whom the debt was to be payable, a consumer failed to establish that the broker was a "creditor" within the meaning of the Truth in Lending Act.³ However, even though an automobile dealer simultaneously assigned a loan to a financing company under a form retail-installment contract for purchase of a vehicle, it "extended credit" to the buyers as a "creditor" under the Act.⁴

Additionally, any person who originates two or more "high-cost mortgages," as such term is separately defined,⁵ in any 12-month period, or any person who originates one or more such mortgages through a mortgage broker, is considered a creditor for purposes of the Act.⁶

The implementing regulation is similar in terms to the statute except for a provision that a person regularly extends consumer credit only if involved in extending credit more than 25 times (or more than five times for transactions secured by a dwelling) in the preceding calendar year.⁷ Thus, the test for determining whether a person engaged in a transaction secured by a dwelling is a creditor is whether the lender had extended credit secured by a dwelling at least five times in the preceding or current year prior to the transaction.⁸

For purposes of the statutory consumer credit cost disclosure requirements, the term "creditor" also includes a private educational lender.⁹

CUMULATIVE SUPPLEMENT

Statutes:

15 U.S.C.A. § 1650(a) was amended effective May 24, 2018, by redesignating paragraphs (1) through (8) as paragraphs (2) through (9), and by adding a new paragraph (1).

[END OF SUPPLEMENT]

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Footnotes

¹ 15 U.S.C.A. § 1602(g).

² *Pollice v. National Tax Funding, L.P.*, 225 F.3d 379 (3d Cir. 2000).

A number of decisions turn upon whether the person extending credit does so regularly. [Garland v. Mobil Oil Corp.](#), 340 F. Supp. 1095 (N.D. Ill. 1972); [James v. Ragin](#), 432 F. Supp. 887 (W.D. N.C. 1977); [Levels v. Merlino](#), 2013 WL 4733993 (N.D. Tex. 2013).

3 [Robey-Harcourt v. BenCorp Financial Co., Inc.](#), 326 F.3d 1140 (10th Cir. 2003).

4 [Riviere v. Banner Chevrolet, Inc.](#), 184 F.3d 457 (5th Cir. 1999) (noting that the loan obligation under the form retail-installment contract was initially payable to the dealer, which identified itself in the contract as "vendor/purchaser").

5 15 U.S.C.A. § 1602(bb).

6 15 U.S.C.A. § 1602(g), referring to 15 U.S.C.A. § 1602(aa), since redesignated as 15 U.S.C.A. § 1602(bb).

7 12 C.F.R. § 1026.2(a)(17)(v).

The guarantor of a note is not a "creditor" within the contemplation of the predecessor to 12 C.F.R. Pt. 1026. [Carter's Ins. Agency, Inc. v. Franklin](#), 428 So. 2d 808 (La. Ct. App. 1st Cir. 1982).

8 [Redic v. Gary H. Watts Realty Co.](#), 762 F.2d 1181 (4th Cir. 1985).

9 15 U.S.C.A. § 1602(g).

For a definition of "private educational lender," see 15 U.S.C.A. § 1650(a)(6).

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Consumer and Borrower Protection

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§ 9. Creditors—Four-installment rule

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  33.1

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[Validity, Construction, and Application of Truth in Lending Act \(TILA\) and Regulations Promulgated Thereunder—United States Supreme Court Cases, 67 A.L.R. Fed. 2d 567](#)

Forms

Forms relating to defendant exempt from statute because not a "creditor", see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection [\[Westlaw® Search Query\]](#)

Forms relating to four installment disclosures, generally, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [\[Westlaw® Search Query\]](#)

The Truth in Lending Act provides, inter alia, that a "creditor" is a person who regularly extends consumer credit, which is payable by agreement in "more than four installments."¹

Observation:

The four installments referred to do not include the down payment.²

The four-installments rule is reasonably related to its objective of preventing creditors from concealing finance charges in the cash price.³

CUMULATIVE SUPPLEMENT

Cases:

In light of legislative history of Truth in Lending Act, Federal Reserve Board in promulgating the four installment rule compelling seller to comply with disclosure requirements of Act to those to whom it extends consumer credit without finance charge if sum owed is payable in more than four installments does not exceed statutory authority and is reasonably related to its objectives of preventing the evasion of reporting requirements of Act by concealing credit charges. Truth in Lending Act, § 105, 15 U.S.C.A. § 1604. *Mourning v. Family Publications Service, Inc.*, 411 U.S. 356, 93 S. Ct. 1652, 36 L. Ed. 2d 318 (1973).

[END OF SUPPLEMENT]

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Footnotes

¹ 15 U.S.C.A. § 1602(g).

² 12 C.F.R. § 1026.2(a)(17)(i).

³ *Mourning v. Family Publications Service, Inc.*, 411 U.S. 356, 93 S. Ct. 1652, 36 L. Ed. 2d 318 (1973).

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§ 10. Creditors—Credit card issuer and persons honoring credit cards

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  33.1, 34

The Truth in Lending Act provides that, notwithstanding the provision generally defining the term "creditor,"¹ in the case of an open-end² credit plan involving a credit card,³ the card issuer and any person who honors the credit card and offers a discount which is a finance charge are creditors.⁴ For certain purposes and in certain instances, the term "creditor" also includes card issuers, whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required.⁵

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Footnotes

- ¹ § 8.
- ² 12 C.F.R. § 1026.2(a)(20) defines "open-end credit."
- ³ The terms "credit card" and "charge card" are defined in 12 C.F.R. § 1026.2(a)(15).
- ⁴ 15 U.S.C.A. § 1602(g).
- ⁵ For a general discussion of credit cards, see [Am. Jur. 2d, Credit Cards and Charge Accounts §§ 1 et seq.](#)

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17 Am. Jur. 2d Consumer Protection § 11

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§ 11. Creditors—Particular persons or entities as "creditors"

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  33.1

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[Validity of Statutes, Ordinances, and Regulations Governing Pawn Shops, 16 A.L.R.6th 219](#)

[Validity, Construction, and Application of Truth in Lending Act \(TILA\) and Regulations Promulgated Thereunder—United States Supreme Court Cases, 67 A.L.R. Fed. 2d 567](#)

[Who is “creditor” within meaning of s103\(f\) of Truth in Lending Act \(15 U.S.C.A. s1602\(f\)\), 157 A.L.R. Fed. 419](#)

Forms

Forms relating to pawn ticket with federal disclosure statement, see Am. Jur. Legal Forms 2d—Moneylenders and Pawnbrokers [\[Westlaw® Search Query\]](#)

In a number of cases, the courts have determined whether or not the Truth in Lending Act applies to particular persons or entities such as finance companies,¹ pawnbrokers,² banks,³ automobile dealers,⁴ automobile credit companies,⁵ realtors,⁶ hospitals,⁷ health clubs,⁸ and miscellaneous retail establishments engaged in the extension of installment credit.⁹ While there is authority that mortgage brokers are creditors within the statutory definition,¹⁰ this conclusion has also been specifically rejected.¹¹

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Footnotes

- 1 Joseph v. Norman's Health Club, Inc., 532 F.2d 86 (8th Cir. 1976); Canaday v. Household Retail Servs., Inc., 119 F. Supp. 2d 1258 (M.D. Ala. 2000), *aff'd*, 268 F.3d 1067 (11th Cir. 2001); Glair v. La Lanne-Paris Health Spa, Inc., 12 Cal. 3d 915, 117 Cal. Rptr. 541, 528 P.2d 357 (1974).
- 2 Burnett v. Ala Moana Pawn Shop, 3 F.3d 1261 (9th Cir. 1993); Dennis v. Handley, 453 F. Supp. 833 (N.D. Ala. 1978); Paglia v. Elliott, 373 N.W.2d 121 (Iowa 1985).
- 3 Fraley v. Ocwen Federal Bank FSB, 8 Fed. Appx. 509 (6th Cir. 2001); Cowen v. Bank United of Texas, FSB, 70 F.3d 937, 33 Fed. R. Serv. 3d 138 (7th Cir. 1995); Jennings v. Edwards, 454 F. Supp. 770 (M.D. N.C. 1978), *aff'd*, 598 F.2d 614 (4th Cir. 1979).
- 4 Sapia v. Regency Motors of Metairie, Inc., 276 F.3d 747 (5th Cir. 2002); Patton v. Jeff Wyler Eastgate, Inc., 608 F. Supp. 2d 907 (S.D. Ohio 2007); Anderson v. Automobile Fund, 258 Pa. Super. 1, 391 A.2d 642 (1978).
- 5 Ford Motor Credit Co. v. Cenace, 452 U.S. 155, 101 S. Ct. 2239, 68 L. Ed. 2d 744 (1981).
- 6 Eby v. Reb Realty, Inc., 495 F.2d 646, 28 A.L.R. Fed. 539 (9th Cir. 1974); James v. Ragin, 432 F. Supp. 887 (W.D. N.C. 1977).
- 7 Bright v. Ball Memorial Hospital Ass'n, Inc., 616 F.2d 328 (7th Cir. 1980).
- 8 Joseph v. Norman's Health Club, Inc., 532 F.2d 86 (8th Cir. 1976).
- 9 McCoy v. Harriman Utility Bd., 790 F.2d 493 (6th Cir. 1986).
- 10 McGowan v. Credit Center of North Jackson, Inc., 546 F.2d 73 (5th Cir. 1977) (rejected by, Cain v. Bethea, 2007 WL 2859681 (E.D. N.Y. 2007)).
- 11 Cain v. Bethea, 2007 WL 2859681 (E.D. N.Y. 2007).
A creditor does not include a mortgage broker who did not extend credit in the specific transaction. *Cetto v. LaSalle Bank Nat. Ass'n*, 518 F.3d 263 (4th Cir. 2008).

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§ 12. Credit sales

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  34

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[Lease with option to purchase agreement as credit sale or consumer lease under definitions in Truth in Lending Act \(15 U.S.C.A. secs. 1602\(g\), 1667\(1\)\) and applicable regulations, 58 A.L.R. Fed. 929](#)

Under the Truth in Lending Act, the term "credit sale" refers to any sale in which the seller is a creditor.¹ The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved, and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his or her obligations under the contract.²

Under the above provisions, an agreement entitled "Rental Agreement with Option to Purchase," referring to a television set, was a "credit sale" despite termination clauses where the agreement required the lessee to pay a sum total which exceeded the value of the property, and the contract was to remain in force unless the plaintiff exercised the right to terminate and forfeited the equities built up in the set.³ Likewise, a residential lease would be deemed a "credit sale" where the terms of the lease

provided, inter alia, that the lessee had the right to purchase the premises for a nominal consideration at the end of the lease; that if the lessee made successive monthly rental payments for 10 years, payments would be effectively credited towards the eventual purchase price; and that the lessee was required to make repairs, pay taxes, water and sewer rent, and insurance, plus interest on the unpaid balance; the plaintiff acquired an equity interest as payments were made, rental fees for the period of the lease were far in excess of the property's fair market value, and the incidents of ownership shifted to the lessee, evidencing that the parties had intended the transaction to be a sale rather than a lease.⁴ However, a consumer could terminate a rent-to-own agreement for lease of a sofa and love seat without penalty at any time, and thus, the agreement did not constitute a "credit sale" under the Truth in Lending Act where the consumer only had to return the furniture if she wanted to terminate the lease, and at that point, she would not forfeit any deposit to which she had a title or claim, be obliged to pay any additional charges, or be subject to legal action for recovery of the remaining rental payments.⁵

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Footnotes

- 1 [15 U.S.C.A. § 1602\(h\).](#)
- 2 [15 U.S.C.A. § 1602\(h\).](#)
- 3 [Waldron v. Best T.V. and Stereo Rentals, Inc., 485 F. Supp. 718 \(D. Md. 1979\).](#)
- 4 [Davis v. Colonial Securities Corp., 541 F. Supp. 302 \(E.D. Pa. 1982\).](#)
- 5 [Ortiz v. Rental Management, Inc., 65 F.3d 335 \(3d Cir. 1995\).](#)

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§ 13. Exempted transactions

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  33.1, 34

Forms

Forms relating to transaction exempt from application of statute, generally, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

The Truth in Lending Act specifically exempts certain transactions from the provisions thereof.¹

The Act does not apply to the following transactions—

- credit transactions involving extensions of credit primarily for business, commercial,² or agricultural³ Purposes; or to government or governmental agencies or instrumentalities; or to organizations.⁴
- transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission.⁵

- credit transactions in which the total amount financed exceeds \$50,000, other than credit transactions in which a security interest is or will be acquired in real property, or in personal property used or expected to be used as the principal dwelling of the consumer, and other than private education loans.⁶
- certain transactions under public utility tariffs, if the Bureau of Consumer Financial Protection determines that a state regulatory body regulates the charges for the public utility services involved, the charges for delayed payment, and any discount allowed for early payment.⁷
- loans made, insured, or guaranteed pursuant to a student loan program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C.A. §§ 1070 et seq.).⁸
- transactions for which the Bureau of Consumer Financial Protection, by rule, determines that coverage under the consumer credit cost disclosure statutes is not necessary to carry out the purposes of such statutes.⁹

CUMULATIVE SUPPLEMENT

Statutes:

15 U.S.C.A. § 1650(a) was amended effective May 24, 2018, by by redesignating paragraphs (1) through (8) as paragraphs (2) through (9), and by adding a new paragraph (1) to define the term 'cosigner' as any individual who is liable for the obligation of another without compensation, regardless of how designated in the contract or instrument with respect to that obligation, other than an obligation under a private education loan extended to consolidate a consumer's preexisting private education loans. The term includes any person the signature of which is requested as condition to grant credit or to forbear on collection; the term does not include the spouse of the liable individual.

[END OF SUPPLEMENT]

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Footnotes

- 1 15 U.S.C.A. § 1603.
- 2 As to business or commercial transactions, generally, see § 14.
- 3 15 U.S.C.A. § 1603(1).
A loan was primarily for agricultural purposes where: (1) the loan application indicated that about half the loan was intended to cover crop expenses; and (2) most other expenditures listed in the application were agriculturally related. *Smith v. Russellville Production Credit Ass'n*, 777 F.2d 1544 (11th Cir. 1985).
- 4 15 U.S.C.A. § 1603(1).
- 5 15 U.S.C.A. § 1603(2).
- 6 15 U.S.C.A. § 1603(3).
For a definition of "private education loan," see 15 U.S.C.A. § 1650(a)(7).
- 7 15 U.S.C.A. § 1603(4).
The implementing regulation expands the statutory provisions, providing, inter alia, that an installment agreement for the purchase of home fuels in which no finance charge is imposed is exempt. 12 C.F.R. § 1026.3(e).
A natural gas company that assessed late-payment charges against a customer was exempt from the disclosure requirements of the Truth in Lending Act inasmuch as the gas company had filed the necessary tariffs and was regulated under Pennsylvania law. *Aronson v. Peoples Natural Gas Co.*, 180 F.3d 558 (3d Cir. 1999).
- 8 15 U.S.C.A. § 1603(7).

9 15 U.S.C.A. § 1603(5).

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West's Key Number Digest, [Antitrust and Trade Regulation](#)  192 to 196, 206, 231, 271

A.L.R. Library

[What constitutes “business or commercial” purpose within meaning of sec. 104\(1\) of Truth in Lending Act \(15 U.S.C.A. sec. 1603\(1\)\), exempting business or commercial credit transactions from Act, 54 A.L.R. Fed. 491](#)

Forms

Forms relating to transaction exempt from application of statute, generally, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

The Truth in Lending Act (TILA) does not apply to credit transactions involving extensions of credit primarily for business or commercial purposes.¹ Whether a transaction falls within the commercial purpose exemption is a factual issue to be resolved

by considering the transaction as a whole and the purpose for which credit was extended.² However, as a general matter, when a party obtains a loan in order to make a profit, that loan is not considered a "personal" loan subject to TILA disclosure requirements.³

Caution:

It is immaterial that one of the persons who signs a note is not involved in running the business.⁴ Similarly, the fact that a credit transaction is secured by a mortgage on a home does not transform the loan from its essential character as a business loan to one within the ambit of the Act.⁵

A loan is exempt under 15 U.S.C.A. § 1603(1) from the provisions of the Truth in Lending Act where the debtors primarily apply the proceeds of the loan to retire business debts and purchase inventory; the fact that the debtors also draw on the proceeds for personal purposes does not change the business nature of the loan since such nature must be judged as of the time the loan was made.⁶ Loans are also for business purposes where the borrower obtains them in order to give the proceeds directly to a financial adviser for investment purposes and uses nonowner occupied, investment rental property as security for the loans.⁷

A loan's original characterization as for business purposes controls throughout the life of the loan where the original use of the loan was for commercial purposes, and the subsequent loan is to repay the original loan, and no evidence is presented that the debtors were aware that the loan was for any purpose other than business.⁸

Observation:

The Act applies to transactions in which the creditor makes a loan to a commercial entity with the knowledge that the loan will be assumed by a noncommercial entity with no changes in the terms of the loan.⁹

CUMULATIVE SUPPLEMENT

Cases:

TILA disclosure requirements did not apply to borrower's loans from bank, even though borrower granted bank security interest in his home or other collateral to secure debt, where loans fell within TILA exemption for credit transactions for business or

commercial purposes. Truth in Lending Act §§ 104, 130, 15 U.S.C.A. §§ 1603(1), 1640(a). *Roberts v. FNB South of Alma, Georgia*, 716 Fed. Appx. 854 (11th Cir. 2017).

[END OF SUPPLEMENT]

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Footnotes

- 1 15 U.S.C.A. § 1603(1).
Federal and state truth-in-lending statutes are not applicable to a guarantee of a commercial loan. *KeyBank Nat. Ass'n v. Sargent*, 2000 ME 153, 758 A.2d 528 (Me. 2000).
- 2 *Gallegos v. Stokes*, 593 F.2d 372, 26 Fed. R. Serv. 2d 1114, 54 A.L.R. Fed. 485 (10th Cir. 1979).
A mortgage loan was not primarily used for the mortgagors' day care business, and thus, the loan was covered by the Truth in Lending Act where the mortgagors' tax returns indicated that only 16.65% of their home was used for day care. *Macheda v. Household Finance Realty Corp. of New York*, 631 F. Supp. 2d 181 (N.D. N.Y. 2008).
- 3 *Mauro v. Countrywide Home Loans, Inc.*, 727 F. Supp. 2d 145 (E.D. N.Y. 2010).
- 4 *Morse v. Mutual Federal Sav. & Loan Ass'n of Whitman*, 536 F. Supp. 1271, 34 U.C.C. Rep. Serv. 230 (D. Mass. 1982).
- 5 *Sherrill v. Verde Capital Corp.*, 719 F.2d 364 (11th Cir. 1983); *Adema v. Great Northern Development Co.*, 374 F. Supp. 318 (N.D. Ga. 1973).
- 6 *Winkle v. Grand Nat. Bank*, 267 Ark. 123, 601 S.W.2d 559 (1980).
- 7 *Mauro v. Countrywide Home Loans, Inc.*, 727 F. Supp. 2d 145 (E.D. N.Y. 2010).
- 8 *Conrad v. Smith*, 42 Wash. App. 559, 712 P.2d 866 (Div. 3 1986).
- 9 *Adiel v. Chase Federal Sav. and Loan Ass'n*, 810 F.2d 1051 (11th Cir. 1987).

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B. Disclosure, in General

1. In General

§ 15. General requirement of disclosure

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 50

The Truth in Lending Act requires that a creditor or lessor disclose to the person who is obligated on a consumer lease or a consumer credit transaction the information required under the Act.¹ While the Act does not demand unyielding compliance with detail, full and honest disclosure is exacted.²

Disclosures should be made in a manner readily understandable by the layperson³ so that potential borrowers will be able to compare available costs of credit.⁴ Accordingly, a court views the sufficiency of disclosures mandated under the Truth in Lending Act from the standpoint of an ordinary consumer,⁵ not the perspective of a Bureau of Consumer Financial Protection member, federal judge, or English professor.⁶ When the main intention of the parties is manifestly clear, the court will not reject an entire loan agreement simply because of the confusing use of one phrase or the absence of a signature.⁷ On the other hand, a disclosure statement intermingling inconsistent state disclosure terms with federally required disclosures violates the Truth in Lending Act.⁸

Observation:

Disclosures must be made prior to the consummation of a transaction,⁹ and the time of consummation of a contract is determined by state law.¹⁰ However, a failure to provide necessary disclosures prior to consummation of a transaction does not also constitute a failure to make the required substantive disclosures so as to make statutory damages available for the lender's disclosure timing violation.¹¹

Disclosures required by Truth in Lending Regulation Z may be made in a language other than English provided that the disclosures are made available in English upon the consumer's request.¹²

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Footnotes

- 1 15 U.S.C.A. § 1631(a).
- 2 Taylor v. Domestic Remodeling, Inc., 97 F.3d 96 (5th Cir. 1996).
- 3 Sneed v. Beneficial Finance Co. of Hawaii, 410 F. Supp. 1135, 19 U.C.C. Rep. Serv. 1223 (D. Haw. 1976);
Greeson v. Lexington State Bank, 497 F. Supp. 301 (M.D. N.C. 1980).
- 4 Dixey v. Idaho First Nat. Bank, 677 F.2d 749 (9th Cir. 1982).
- 5 Rivera v. Grossinger Autoplex, Inc., 274 F.3d 1118 (7th Cir. 2001).
- 6 Lifanda v. Elmhurst Dodge, Inc., 237 F.3d 803 (7th Cir. 2001) (referring to the Federal Reserve Board,
formerly responsible for administering the Act).
- 7 Pridegon v. Gates Credit Union, 683 F.2d 182, 34 U.C.C. Rep. Serv. 717 (7th Cir. 1982).
- 8 In re Dillin, 557 F. Supp. 363 (S.D. Ga. 1983), republished at 28 B.R. 625.
- 9 12 C.F.R. § 1026.17(b).
12 C.F.R. § 1026.2(a)(13) defines "consummation" as the time at which the consumer becomes contractually
obligated on a credit transaction.
Consummation of a credit transaction or extension of credit, such that Truth in Lending Act liability of a
creditor can accrue for lack of required disclosures, encompasses unfunded financing-agreement options to
which consumers contractually commit and under which they can be bound at the lender's sole discretion.
Nigh v. Koons Buick Pontiac GMC, Inc., 319 F.3d 119 (4th Cir. 2003), judgment rev'd on other grounds,
543 U.S. 50, 125 S. Ct. 460, 160 L. Ed. 2d 389 (2004).
When the purchaser of a motor vehicle signs a retail installment sales contract after which he or she no
longer can alter the terms of credit and after which the dealer retains the exclusive right to decide when the
financing arrangement takes effect, the transaction is "consummated" for Truth in Lending Act purposes.
Gibson v. LTD, Inc., 434 F.3d 275 (4th Cir. 2006).
- 10 Bourgeois v. Haynes Const. Co., 728 F.2d 719 (5th Cir. 1984).
- 11 In re Ferrell, 358 B.R. 777 (B.A.P. 9th Cir. 2006), aff'd, 539 F.3d 1186 (9th Cir. 2008).
- 12 12 C.F.R. § 1026.27 (this requirement for providing English disclosures on request does not apply to
advertisements that are otherwise regulated).

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§ 16. Form of disclosures

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Information required by the Truth in Lending Act must be disclosed clearly and conspicuously in accordance with regulations of the Bureau of Consumer Financial Protection.¹ The "clear" disclosure requirement does not apply to matters which are not required to be disclosed.²

The terms "annual percentage rate"³ and "finance charge"⁴ must be disclosed more conspicuously than other terms, data, or information except information relating to the identity of the creditor.⁵ Those terms need not be the most conspicuous items but need only be more conspicuous than other terms required to be disclosed.⁶ If they are not, the plaintiff may rescind the transaction.⁷ A violation does not, however, give rise to a right to recover statutory damages.⁸

All disclosures required by the Truth in Lending Act and 12 C.F.R. Pt. 226 must be in writing, and even where oral disclosures are found to be accurate, such a finding does not lessen the liability for failure to reduce disclosures to writing.⁹

The requirement of the Uniform Commercial Code that for a writing to be conspicuous it must be in larger, contrasting type or color cannot be read into the Truth in Lending Act.¹⁰ However, although the Truth in Lending Act does not mandate any minimum type size, it simply does not follow that type size is irrelevant to a determination of whether a disclosure is "conspicuous."¹¹ If, for purposes of the Act's disclosure requirements, the term "conspicuous" is to retain any meaning at all,

it cannot be met as a matter of law by type disproportionately small to that in the rest of the document and which is itself barely legible.¹²

The regulations of the Bureau of Consumer Financial Protection need not require that disclosures be made in the order set forth in the Act and, except as otherwise provided, may permit the use of terminology different from that employed in the Act if it conveys substantially the same meaning.¹³

Observation:

No requirement is made by the Truth in Lending Act that disclosures be in "meaningful sequence"¹⁴ although the term is used in the statutory provision pertaining to promulgation by the Bureau of Consumer Financial Protection of model forms.¹⁵

The borrower's right to rescind a loan transaction within three days of consummation is not "clearly and conspicuously" disclosed as required when the lender requires the borrower to sign a postdated confirmation of nonrescission because the average borrower would be confused when instructed to certify a falsehood and as to the effect of the falsehood.¹⁶

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Footnotes

- 1 [15 U.S.C.A. § 1632\(a\).](#)
Conspicuousness of language is a question of law under the Truth in Lending Act that, like clarity, is governed by an objective, reasonable-person approach. [Rivera v. Grossinger Autoplex, Inc.](#), 274 F.3d 1118 (7th Cir. 2001).
- 2 [Greeson v. Lexington State Bank](#), 497 F. Supp. 301 (M.D. N.C. 1980).
- 3 [§ 33.](#)
- 4 [§§ 25 to 30.](#)
- 5 [15 U.S.C.A. § 1632\(a\).](#)
On loan agreement forms for payday loans, a circle drawn by hand around the due date did not violate the Truth in Lending Act regulation requiring that the finance charge and annual percentage rate be "more conspicuous than any other disclosure, except the creditor's identity," despite debtors' contention that the hand-drawn circle made the due date "more conspicuous" than the boldface boxes and type used for finance charge and annual percentage rate. [Smith v. Check-N-Go of Illinois, Inc.](#), 200 F.3d 511 (7th Cir. 1999).
- 6 [Dixey v. Idaho First Nat. Bank](#), 677 F.2d 749 (9th Cir. 1982); [Grey v. European Health Spas, Inc.](#), 428 F. Supp. 841 (D. Conn. 1977).
- 7 [Ehlert v. Ward](#), 588 S.W.2d 500 (Mo. 1979).
- 8 [In re Ferrell](#), 539 F.3d 1186 (9th Cir. 2008).
- 9 [Dryden v. Lou Budke's Arrow Finance Co.](#), 661 F.2d 1186 (8th Cir. 1981).
- 10 [National Republic Bank of Chicago v. Proctor](#), 66 Ill. App. 3d 534, 23 Ill. Dec. 283, 383 N.E.2d 1310, 26 U.C.C. Rep. Serv. 567 (1st Dist. 1978).
- 11 [Lifanda v. Elmhurst Dodge, Inc.](#), 237 F.3d 803 (7th Cir. 2001).
- 12 [Lifanda v. Elmhurst Dodge, Inc.](#), 237 F.3d 803 (7th Cir. 2001).

- 13 15 U.S.C.A. § 1632(a).
14 15 U.S.C.A. § 1632(a).
15 As to 15 U.S.C.A. § 1604(b), see § 224.
16 Conrad v. Farmers and Merchants Bank, 762 F. Supp. 2d 843 (W.D. Va. 2011).

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§ 17. Form of disclosures—Use of more than one page or one side of page

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 51

As a general rule, the purpose of the Truth in Lending Act is better served when all of the required disclosures are contained on one side of one sheet of paper; the burden imposed upon the creditor thereby is slight, but the benefit to the borrowing public is substantial.¹

The requirement that disclosures be "conspicuous"² has been viewed as precluding the use of both sides of an agreement form for disclosures.³ Conversely, where all material information regarding the amount of a loan, interest rate, repayment amount, and security interest description is contained on one side of an agreement with the borrower's signature appearing below each section, and the terms and conditions on the reverse side do not go to any essential or important element of the contract, there is no violation of the disclosure requirements.⁴

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Footnotes

- ¹ [Pedro v. Pacific Plan of California](#), 393 F. Supp. 315 (N.D. Cal. 1975).
- ² [§ 16](#).
- ³ [McDonald v. Savoy](#), 501 S.W.2d 400 (Tex. Civ. App. San Antonio 1973) (disapproved of on other grounds by, [Holmes v. Olson](#), 587 S.W.2d 678 (Tex. 1979)).

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§ 18. Form of disclosures—Electronic disclosures

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West's Key Number Digest

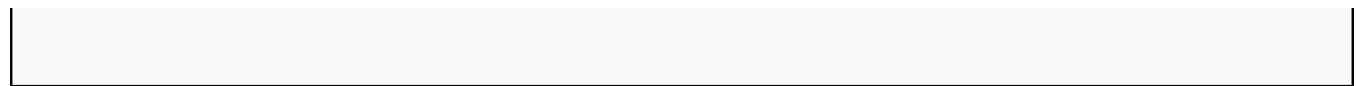
West's Key Number Digest, Consumer Credit 51

Each creditor must establish and maintain an Internet site on which the creditor must post the written agreement between the creditor and the consumer for each credit card account under an open-end consumer credit plan.¹ Each creditor must also provide to the Bureau of Consumer Financial Protection, in electronic format, the consumer credit card agreements that it publishes on its Internet site.² The Bureau is required to maintain on its publicly available Internet site a central repository of such agreements, easily accessible and retrievable by the public.³

The foregoing requirements do not apply to individually negotiated changes to contractual terms, such as individually modified workouts or renegotiations of amounts owed by a consumer under an open-end consumer credit plan.⁴

Observation:

The Bureau, in consultation with other federal banking agencies, may promulgate regulations to implement the foregoing requirements.⁵



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Footnotes

- 1 [15 U.S.C.A. § 1632\(d\)\(1\).](#)
- 2 [15 U.S.C.A. § 1632\(d\)\(2\).](#)
- 3 [15 U.S.C.A. § 1632\(d\)\(3\).](#)
- 4 [15 U.S.C.A. § 1632\(d\)\(4\).](#)
- 5 [15 U.S.C.A. § 1632\(d\)\(5\).](#)
Internet posting of credit card agreements, see [12 C.F.R. § 1026.58](#).

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§ 19. Additional information

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A creditor may supply additional information or explanation with required disclosures.¹ Whether particular additional information is misleading or confusing depends on the particular circumstances of the case. Thus, a reference to a state mechanic's lien law is misleading or confusing where no security interest under such law is contemplated, and there is, in fact, no basis for claiming such a lien.² Similarly, the positioning of the unlabeled net finance charge in relation to the required finance charge confuses customers and clearly detracts attention from the required disclosure.³

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Footnotes

- ¹ 15 U.S.C.A. § 1632(b).
- ² *Engle v. Shapert Const. Co.*, 443 F. Supp. 1383 (M.D. Pa. 1978).
- ³ *Welmaker v. W. T. Grant Co.*, 365 F. Supp. 531, 18 Fed. R. Serv. 2d 280 (N.D. Ga. 1972); *Jones v. Goodyear Tire & Rubber Co.*, 442 F. Supp. 1157 (E.D. La. 1977).

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§ 20. Where transaction involves more than one creditor

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Where a consumer credit transaction involves more than one creditor or lessor, only one creditor or lessor is required to make the disclosures required by the Truth in Lending Act.¹

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Footnotes

- ¹ [15 U.S.C.A. § 1631\(b\)](#).
The implementing regulations provide that if an open-end or closed-end consumer credit plan involves more than one creditor, only one set of disclosures need be given, and the creditors must agree among themselves which creditor must comply with disclosure requirements. [12 C.F.R. §§ 1026.5\(d\), 1026.17\(d\)](#).

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§ 21. Where transaction involves an assignee

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The Truth in Lending Act imposes separate and distinct disclosure obligations on creditors and assignees: creditors are primarily responsible for making the required disclosures and ensuring that they are accurate and commit a violation of the Act when they fail to disclose their retention of a portion of extended warranty charges reported as "Amounts Paid to Others on Your Behalf," but the Act limits the duty of assignees to a review of the assigned documents to determine if they contain violations that a reasonable person can spot on the face of those documents.¹

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Footnotes

¹ [Jackson v. South Holland Dodge, Inc., 197 Ill. 2d 39, 258 Ill. Dec. 79, 755 N.E.2d 462 \(2001\).](#)

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§ 22. Where transaction involves more than one obligor

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  51

Where a consumer credit transaction involves more than one obligor, the creditor or lessor need not make the required disclosures to more than one of such obligors if the obligor given disclosure is a primary obligor except in a transaction that may be rescinded.¹ Where the transaction is one which may be rescinded, all customers to the transaction are entitled to necessary disclosures.²

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Footnotes

- ¹ [15 U.S.C.A. § 1631\(a\)](#).
The regulations implementing the statute provide that where there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account, but if the right of rescission is applicable, the disclosures must be made to each consumer having the right to rescind. [12 C.F.R. §§ 1026.5\(d\), 1026.17\(d\)](#).
- ² [Gerasta v. Hibernia Nat. Bank](#), 411 F. Supp. 176 (E.D. La. 1975), *aff'd in part, rev'd in part on other grounds and remanded*, 575 F.2d 580 (5th Cir. 1978) (rejected on other grounds by, [In re Lynch](#), 170 B.R. 26 (Bankr. D. N.H. 1994)).
A plaintiff provides sufficient basis for a request for rescission under the Truth in Lending Act with allegations that a lender does not provide the proper number of copies of notice of right to rescind to each borrower. [Seldon v. Home Loan Services, Inc.](#), 647 F. Supp. 2d 451, 74 Fed. R. Serv. 3d 235 (E.D. Pa. 2009).

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§ 23. Estimate of unknown information

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The Bureau of Consumer Financial Protection may provide by regulation that any portion of the information required to be disclosed by the Truth in Lending Act may be given in the form of estimates where the provider of such information is not in a position to know exact information.¹

Observation:

In the case of any consumer credit transaction, a portion of the interest of which is determined on a per diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of interest shall be deemed to be accurate if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction.²

Footnotes

- 1 15 U.S.C.A. § 1631(c).
2 15 U.S.C.A. § 1631(c).

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§ 24. Effect of disclosure becoming inaccurate because of subsequent events

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The Truth in Lending Act provides that if information disclosed in accordance with the Act is subsequently rendered inaccurate as the result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of the Act.¹

Observation:

A prepayment penalty is not a subsequent occurrence, and a violation exists where the disclosure statement neither describes the penalty charge nor explains the method of computing it.²

Footnotes

1 [15 U.S.C.A. § 1634.](#)

2 [Kenney v. Landis Financial Group, Inc., 349 F. Supp. 939 \(N.D. Iowa 1972\).](#)

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2. Determination of Finance Charge

§ 25. Generally

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[What constitutes "finance charge" under sec. 106\(a\) of the Truth in Lending Act \(15 U.S.C.A. sec. 1605\(a\)\) or applicable regulations, 154 A.L.R. Fed. 431](#)

[What constitutes violation of sec. 106\(e\) of Truth in Lending Act \(15 U.S.C.A. sec. 1605\(e\)\) relating to exemption of certain costs or fees from computation of finance charge in extensions of credit secured by interest in real property, 115 A.L.R. Fed. 453](#)

Forms

Forms relating to finance charge, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

The Truth in Lending Act requires covered lenders to disclose to a borrower, at the time of making a loan, not only the interest rate but also any "finance charge,"¹ which, except as otherwise provided in the Act,² is defined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended and imposed directly or indirectly by the creditor as an incident to the extension of credit.³

The Truth in Lending Act provision pertaining to the determination of the finance charge and the implementing regulation supply a nonexhaustive⁴ list of examples of those charges which are to be included therein.⁵

The first type of charge enumerated by the Act as included in the finance charge is interest,⁶ time price differential, and any amount payable under a point,⁷ discount, or other system of additional charges.⁸ A discount for the purpose of inducing payment by a means other than the use of credit is also includible in the finance charge.⁹

The statute and the implementing regulation also enumerate the following charges as includible in the finance charge: service or carrying charge;¹⁰ loan fee, finder's fee, or similar charge;¹¹ fee for an investigation or credit report;¹² premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss;¹³ and borrower-paid mortgage-broker fees, including fees paid directly to the broker or the lender, whether such fees are paid in cash or financed.¹⁴ The regulation then adds four categories:

- under certain circumstances, charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation¹⁵
- premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction¹⁶
- premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, written in connection with a credit transaction¹⁷
- charges or premiums paid for debt-cancellation coverage written in connection with a credit transaction, whether or not the debt-cancellation coverage is insurance under applicable law¹⁸

Practice Tip:

A "systematic" disparity between prices charged to cash and credit customers is not an element of a cause of action against the seller under the Truth in Lending Act for collecting an undisclosed finance charge but is simply one manner in which circumstantial evidence can be used to prove that the seller is burying the cost of credit in the price of goods sold.¹⁹

Footnotes

¹ Cowen v. Bank United of Texas, FSB, 70 F.3d 937, 33 Fed. R. Serv. 3d 138 (7th Cir. 1995).

2 As to excluded items, see § 30.

3 15 U.S.C.A. § 1605(a).

If a borrower can choose to avoid an express-mail fee by having documents sent via regular mail, then the fee is not imposed as an incident to the extension of credit and does not constitute a finance charge. *Veale v. Citibank*, F.S.B., 85 F.3d 577 (11th Cir. 1996).

A "storage fee" imposed by an automobile pawnbroker at the beginning of each transaction was a "finance charge" under the Truth in Lending Act where the pawnbroker would not have extended credit unless the pawned automobile was left in its possession and the fee paid even if the pawnbroker refunded the fee on a pro rata basis when the automobile was redeemed in less than 30 days. *Yazzie v. Ray Vicker's Special Cars, Inc.*, 12 F. Supp. 2d 1230 (D.N.M. 1998).

4 *McGee v. Kerr-Hickman Chrysler Plymouth, Inc.*, 93 F.3d 380, 35 Fed. R. Serv. 3d 1217 (7th Cir. 1996).

5 15 U.S.C.A. § 1605(a); 12 C.F.R. § 1026.4(b).

6 *Trist v. First Federal Sav. & Loan Ass'n of Chester*, 466 F. Supp. 578 (E.D. Pa. 1979).

7 The regulation uses the term "add-on." 12 C.F.R. § 1026.4(b)(1).

8 15 U.S.C.A. § 1605(a)(1).

9 12 C.F.R. § 1026.4(b)(9).

Under the Truth in Lending Act, a higher cash price paid for buying on credit would be a "finance charge," which must be disclosed to the consumer as such. *Walker v. Wallace Auto Sales, Inc.*, 155 F.3d 927 (7th Cir. 1998).

10 15 U.S.C.A. § 1605(a)(2); 12 C.F.R. § 1026.4(b)(2) (referring to service, transaction, activity, and carrying charges).

11 15 U.S.C.A. § 1605(a)(3); 12 C.F.R. § 1026.4(b)(3) (referring to points, loan fees, assumption fees, finder's fees, and similar charges).

A "loan fee" or "origination fee" paid up front or withheld from the proceeds of a loan is a "prepaid finance charge" under Regulation Z of the Federal Truth in Lending Act. *Gonzales v. Associates Financial Service Co. of Kansas, Inc.*, 266 Kan. 141, 967 P.2d 312 (1998).

12 15 U.S.C.A. § 1605(a)(4); 12 C.F.R. § 1026.4(b)(4) (referring to appraisal, investigation, and credit report fees).

13 15 U.S.C.A. § 1605(a)(5); 12 C.F.R. § 1026.4(b)(5).

14 15 U.S.C.A. § 1605(a)(6).

15 12 C.F.R. § 1026.4(b)(6).

16 12 C.F.R. § 1026.4(b)(7).

17 12 C.F.R. § 1026.4(b)(8).

18 12 C.F.R. § 1026.4(b)(10).

19 *Cornist v. B.J.T. Auto Sales, Inc.*, 272 F.3d 322, 2001 FED App. 0403P (6th Cir. 2001).

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2. Determination of Finance Charge

§ 26. Itemized and disclosed items

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West's Key Number Digest, Consumer Credit 52

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[When is item sufficiently "itemized and disclosed" in accordance with sec. 106\(d\) of the Consumer Credit Protection Act \(15 U.S.C.A. sec. 1605\(d\)\) and applicable regulations so that it need not be included in finance charge, 51 A.L.R. Fed. 754](#)

In computing the finance charge, certain items need not be included if they are itemized and disclosed.¹ Such items are fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of, or for perfecting or releasing or satisfying, any security related to the credit transaction;² the premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction if the premium does not exceed statutorily described fees and charges,³ which would otherwise be payable;⁴ and any tax levied on security instruments or documents evidencing indebtedness if the payment of such taxes is a precondition for recording the instrument securing the evidence of indebtedness.⁵

With regard to the requirement that items must be "itemized and disclosed" if they are to be excluded when computing the finance charge, one court has taken the position that itemization is not required if it will not contribute to the informed use of

credit or enable the consumer to compare the credit terms available;⁶ another court has suggested that Congress chose to exempt charges "prescribed by law" because they are effectively out of the lender's control so that no benefit is gained by having them specifically itemized.⁷ On the other hand, it has been said that even though the failure to itemize may be "miniscule," once a violation is found, even though technical in nature, the court has no discretion with respect to the imposition of liability.⁸

A detailed installment contract containing a disclosure statement under a section entitled "Other Charges" and listing in this section the charges for the license, title, and registration fees is sufficiently itemized.⁹

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Footnotes

- 1 15 U.S.C.A. § 1605(d).
- 2 15 U.S.C.A. § 1605(d)(1).
- 3 15 U.S.C.A. § 1605(d)(1).
- 4 15 U.S.C.A. § 1605(d)(2).
- 5 15 U.S.C.A. § 1605(d)(3).
- 6 *Downey v. Whaley Lamb Ford Sales, Inc.*, 607 F.2d 1093, 51 A.L.R. Fed. 749 (5th Cir. 1979).
- 7 *George v. General Finance Corp. of Louisiana*, 414 F. Supp. 33 (E.D. La. 1976).
- 8 *Grant v. Imperial Motors*, 539 F.2d 506 (5th Cir. 1976).
- 9 *Knighten v. Century Dodge, Inc.*, 607 F.2d 1096 (5th Cir. 1979); *Williams v. Bill Watson Ford, Inc.*, 423 F. Supp. 345 (E.D. La. 1976).

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Consumer and Borrower Protection

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I. Overview

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§ 27. Credit life, accident, or health insurance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 55

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[What constitutes violation of requirements of sec. 106\(b\), \(c\) of Truth in Lending Act \(TILA\) \(15 U.S.C.A. sec. 1605\(b\), \(c\)\) concerning inclusion of premiums for life, accident, or health insurance, or for property damage or liability insurance, in determination of finance charge, 116 A.L.R. Fed. 635](#)

Generally, charges or premiums for credit life, accident, or health insurance written in connection with any consumer credit transaction are included in the finance charge if certain conditions are not met.¹ Put another way, premiums for such insurance may be excluded from the finance charge if certain conditions are met.²

Observation:

Where the premium is not excludable, it must be itemized as part of the finance charge.³

The premium may be excluded if: (1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and such fact is clearly disclosed in writing;⁴ and (2) the person to whom credit is extended gives specific affirmative written indication of his or her desire to obtain the insurance after written disclosure to such person of the cost thereof.⁵ Both of the foregoing conditions must be met if the cost of insurance is to be left out of the finance charge.⁶

Questions as to the sufficiency, form, and the like of the creditor's disclosure that insurance is not required and the consumer's request for insurance after disclosure to him or her of the cost thereof have generated a significant amount of litigation,⁷ involving such questions as to whether a borrower's written request for credit life insurance must be dated next to his or her signature,⁸ when a charge for credit life insurance is required to be disclosed in the finance charge,⁹ the effect of the lack of a date appearing beside the debtor's signature indicating his or her desire for credit life insurance,¹⁰ or the failure to show the term of the life insurance where the insurance term coincides with the term of the loan.¹¹

Insurance disclosures made by cross-references to other documents comply with the regulation if they are written and arranged properly.¹²

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Footnotes

- 1 15 U.S.C.A. § 1605(b).
The essential feature of a "credit life insurance" policy, so that the premium will be included as part of the finance charge under the Truth in Lending Act, is that the beneficiary must be the creditor or the credit account of the insured. *Williams v. First Government Mortg. and Investors Corp.*, 225 F.3d 738 (D.C. Cir. 2000).
- 2 12 C.F.R. § 1026.4(d)(1).
- 3 *Cody v. Community Loan Corp. of Richmond County*, 606 F.2d 499 (5th Cir. 1979); *Lowery v. Finance America Corp.*, 32 N.C. App. 174, 231 S.E.2d 904 (1977).
- 4 15 U.S.C.A. § 1605(b)(1).
Nonmandatory credit-insurance premiums are not finance charges. *Ecenrode v. Household Finance Corp. of South Dover*, 422 F. Supp. 1327 (D. Del. 1976).
- 5 15 U.S.C.A. § 1605(b)(2).
- 6 *Copley v. Rona Enterprises, Inc.*, 423 F. Supp. 979 (S.D. Ohio 1976).
- 7 *Stewart v. Abraham Lincoln Mercury, Inc.*, 698 F.2d 1289 (5th Cir. 1983).
- 8 *In re Warren*, 387 F. Supp. 1395 (S.D. Ohio 1975).
- 9 *Simmons v. American Budget Plan, Inc.*, 386 F. Supp. 194 (E.D. La. 1974).
- 10 *Personal Finance Co. v. Meredith*, 39 Ill. App. 3d 695, 350 N.E.2d 781, 20 U.C.C. Rep. Serv. 198 (5th Dist. 1976).
- 11 *Young v. Ouachita Nat. Bank in Monroe*, 428 F. Supp. 1323 (W.D. La. 1977).
- 12 *Wright v. Tower Loan of Mississippi, Inc.*, 679 F.2d 436 (5th Cir. 1982).

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§ 28. Property insurance

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West's Key Number Digest

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Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, must be included in the finance charge unless certain conditions are met.¹ Stated another way, premiums for such insurance may be excluded from the finance charge if such conditions are met.²

Observation:

Insurance is not "written in connection with" the transaction when it is not purchased by the consumer for the purpose of being used in connection with the extension of credit.³ Hence, a fee for "GAP" debt cancellation insurance, obtained as part of a retail installment sales contract for purchase of a used car, is not required to be disclosed as part of the "finance charge" where the borrower could have gotten the car loan and purchased the car without agreeing to buy GAP, which protects the borrower from having to pay off the loan if the car was stolen or destroyed, and the GAP agreement does not affect the rate of interest on the loan, the number of payments required on the loan, or the time period over which the loan has to be repaid.⁴

Premiums must be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the consumer: (1) setting forth the cost of the insurance if obtained from or through the creditor; and (2) stating that the consumer may choose the person through which the insurance is to be obtained.⁵ A statement is sufficient where it reveals the cost of insurance and advises the consumer of the right to obtain insurance from a source of his or her choice⁶ and insufficient where it fails to set forth the cost of insurance obtained through the creditor.⁷ A statement is also insufficient where it discloses that the consumer can obtain the cost of insurance from any source without advising the consumer that he or she has the right to purchase insurance from that source.⁸

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Footnotes

- 1 [15 U.S.C.A. § 1605\(c\).](#)
A consumer's auto-theft registration protection, an antitheft etching identification program that promised to pay the consumer the lesser of \$3,000 or the amount paid by his insurance company if his vehicle was stolen within three years of its purchase date, was property insurance against loss or damage; thus, its premium was a "finance charge" within the meaning of the Truth in Lending Act. [Lifanda v. Elmhurst Dodge, Inc.](#), 237 F.3d 803 (7th Cir. 2001).
- 2 [12 C.F.R. § 1026.4\(d\)\(2\).](#)
- 3 [Thomas v. Ford Motor Credit Co.](#), 48 Md. App. 617, 429 A.2d 277, 31 U.C.C. Rep. Serv. 1265 (1981).
- 4 [McGee v. Kerr-Hickman Chrysler Plymouth, Inc.](#), 93 F.3d 380, 35 Fed. R. Serv. 3d 1217 (7th Cir. 1996).
- 5 [15 U.S.C.A. § 1605\(c\).](#)
A lender satisfied conditions for excluding property-insurance premiums from the finance charge when it indicated that the buyer could obtain required insurance for collateral through another party and outlined the terms of insurance if obtained through the lender; thus, exclusion of premiums from the finance charge did not violate the Truth in Lending Act notwithstanding the borrower's contention that, because no valid security interest existed, the premium was an additional finance charge that had to be disclosed as such. [Szumny v. American General Finance](#), 246 F.3d 1065 (7th Cir. 2001).
- 6 [Bud Finance Co., Inc. v. Gilardi](#), 330 So. 2d 622 (La. Ct. App. 4th Cir. 1976).
- 7 [McDonald v. Savoy](#), 501 S.W.2d 400 (Tex. Civ. App. San Antonio 1973) (disapproved of on other grounds by, [Holmes v. Olson](#), 587 S.W.2d 678 (Tex. 1979)).
- 8 [Burton v. G.A.C. Finance Co.](#), 525 F.2d 961, 21 Fed. R. Serv. 2d 318 (5th Cir. 1976).

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§ 29. Transactions in real property

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 52

When charged in connection with any extension of credit secured by an interest in real property, certain items are not to be included in the computation of the finance charge.¹ The items enumerated by the Act are as follows: fees or premiums for title examination, title insurance, or similar purposes;² fees for preparation of loan-related documents;³ escrows for future payments of taxes and insurance;⁴ fees for notarizing deeds and other documents;⁵ appraisal fees, including fees related to any pest infestation or flood hazard inspections conducted before closing;⁶ and credit reports.⁷

Observation:

The provision excluding title-insurance premiums should be construed as applying to both the mortgagee's title insurance and the owner's title insurance so that the cost of the latter need not be disclosed.⁸

Footnotes

- 1 [15 U.S.C.A. § 1605\(e\).](#)
- 2 [15 U.S.C.A. § 1605\(e\)\(1\).](#)
To determine whether title search fees are bona fide and reasonable in amount, such that they need not be disclosed as part of the finance charge, courts look to whether title services were rendered in good faith, whether the fees indirectly augment the yield of the loan, and whether the services were comparable to the prevailing practices of the industry in that locality. [Parham v. HSBC Mortg. Corp.](#), 826 F. Supp. 2d 906 (E.D. Va. 2011), *aff'd*, 473 Fed. Appx. 244 (4th Cir. 2012).
- 3 [15 U.S.C.A. § 1605\(e\)\(2\).](#)
- 4 [15 U.S.C.A. § 1605\(e\)\(3\).](#)
It is not violative of the Act for lending institutions not to deduct certain escrow payments from the unpaid principal-debt balances when calculating the interest owed. [Munn v. American General Inv. Corp.](#), 364 F. Supp. 110 (S.D. Tex. 1973).
- 5 [15 U.S.C.A. § 1605\(e\)\(4\).](#)
A notary fee is reasonable, so as to exempt the fee from inclusion in the finance charge disclosure in a credit transaction, where it is comparable to the prevailing practices of the industry in the locality. [Little v. Bank of America, N.A.](#), 769 F. Supp. 2d 954 (E.D. Va. 2011).
- 6 [15 U.S.C.A. § 1605\(e\)\(5\).](#)
- 7 [15 U.S.C.A. § 1605\(e\)\(6\).](#)
- 8 [Postow v. Oriental Bldg. Ass'n](#), 390 F. Supp. 1130 (D.D.C. 1975).

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§ 30. Excluded charges

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West's Key Number Digest

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[Validity and construction of provision imposing "late charge" or similar exaction for delay in making periodic payments on note, mortgage, or installment sale contract, 63 A.L.R.3d 50](#)

The finance charge does not include charges of a type payable in a comparable cash transaction.¹ Furthermore, the finance charge does not include fees and amounts imposed by third-party closing agents if the creditor does not require the imposition of the charges or the services provided and does not retain the charges.²

Charges excluded from the finance charge also include fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis,³ and charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence.⁴

Charges imposed by a financial institution for paying items that overdraw an account are not part of the finance charge unless the payment of such items and the imposition of the charges were previously agreed upon in writing.⁵

Also not a part of the finance charge are delivery and packing charges imposed by a seller regardless of whether the purchase is by cash or credit⁶ and other miscellaneous charges.⁷ Also specifically excluded are application fees charged to all applicants for credit, whether or not credit is actually extended;⁸ seller's points;⁹ interest forfeited as a result of an interest reduction required by law on a time deposit used as security for an extension of credit;¹⁰ certain bona fide and reasonable fees in a transaction secured by real property or in a residential mortgage transaction;¹¹ and discounts offered to induce payment for a purchase by cash, check, or other means.¹²

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Footnotes

- 1 15 U.S.C.A. § 1605(a).
The statute does not imply that any charge that would not occur in a cash transaction but could occur in a credit transaction is automatically a "finance charge." *McGee v. Kerr-Hickman Chrysler Plymouth, Inc.*, 93 F.3d 380, 35 Fed. R. Serv. 3d 1217 (7th Cir. 1996).
An administrative charge paid to a dental fee plan that arranged financing for a patient was not a finance charge, even though the promissory note stated that the entire amount of the loan was paid to the dentist, where the price that the patient paid to the dentist was the same amount that she would have paid at that time in a cash transaction. *Jones v. People's Heritage Bank*, 433 F. Supp. 2d 1328 (S.D. Ga. 2006).
- 2 15 U.S.C.A. § 1605(a).
- 3 12 C.F.R. § 1026.4(c)(4).
- 4 12 C.F.R. § 1026.4(c)(2).
The regulatory exclusion of overlimit fees, which are imposed only when consumer-borrower exceeds his or her credit limit, was not arbitrary, capricious, or manifestly contrary to statute and was thus binding on the courts. *Household Credit Services, Inc. v. Pfennig*, 541 U.S. 232, 124 S. Ct. 1741, 158 L. Ed. 2d 450 (2004).
- 5 12 C.F.R. § 1026.4(c)(3).
- 6 *Mondik v. DiSimo*, 386 F. Supp. 537 (W.D. Pa. 1974), *aff'd*, 521 F.2d 1399 (3d Cir. 1975).
- 7 *Manzina v. Publishers Guild, Inc.*, 386 F. Supp. 241 (S.D. N.Y. 1974); *Mondik v. DiSimo*, 386 F. Supp. 537 (W.D. Pa. 1974), *aff'd*, 521 F.2d 1399 (3d Cir. 1975); *Thomas v. Ford Motor Credit Co.*, 48 Md. App. 617, 429 A.2d 277, 31 U.C.C. Rep. Serv. 1265 (1981).
- 8 12 C.F.R. § 1026.4(c)(1).
- 9 12 C.F.R. § 1026.4(c)(5).
- 10 12 C.F.R. § 1026.4(c)(6).
- 11 12 C.F.R. § 1026.4(c)(7).
Mortgages, generally, see §§ 218 to 243.
- 12 12 C.F.R. § 1026.4(c)(8).

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3. Disclosures in Open-End Credit Transactions

a. In General

§ 31. Generally

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 50

The Truth in Lending Act imposes upon creditors the duty of making specific disclosures with regard to open-end consumer credit plans.¹

Definition:

As used in the Act, the term "open-end credit plan," or "open-end consumer credit plan," means a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge that may be computed from time to time on the outstanding unpaid balance.²

Two types of disclosures are required for open-end credit accounts, the first disclosure being made when the account is opened, advising the consumer what will or may happen to his or her account, and the second disclosure consisting of periodic statements to a user of an open-end credit account advising the user of what happened to the account.³

Observation:

A credit card company is not required, under the Truth in Lending Act, to investigate the legitimacy of an address provided by a spouse, who has schemed unbeknownst to the other spouse, to create a post-office box to which the credit card and the required disclosures are to be sent.⁴

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Footnotes

- 1 15 U.S.C.A. § 1637.
- 2 15 U.S.C.A. § 1602(j) (providing further that a credit plan which is an open-end credit plan within the meaning of the above definition is an open-end credit plan even if credit information is verified from time to time).
A credit arrangement by which satellite dish buyers obtained financing through a dish distributor's credit card was an "open-end credit plan" for purposes of the Truth in Lending Act's disclosure requirements; the issuing bank had a reasonable expectation that at least some repeat transactions would be made by card holders, including dish buyers, despite conditions imposed on the card's use. [Benion v. Bank One, Dayton, N.A.](#), 144 F.3d 1056 (7th Cir. 1998).
- 3 [Thomas v. Myers-Dickson Furniture Co.](#), 479 F.2d 740 (5th Cir. 1973).
- 4 [MacDermid v. Discover Financial Services](#), 488 F.3d 721 (6th Cir. 2007).

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a. In General

§ 32. Form and location of disclosures

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 52

Open-end credit-account disclosures must be made clearly and conspicuously,¹ generally in writing, and in a form that the consumer may keep.² The required disclosures may be provided to the consumer in electronic form.³

Observation:

A notice that the required disclosures are printed on the reverse side of periodic statements does not necessitate the use of particular print-style formats; however, whatever print style the creditor adopts must disclose the notice provision clearly and conspicuously.⁴

The governing regulations also impose specific format requirements⁵ and requirements as to terminology.⁶

Practice Tip:

The Bureau of Consumer Financial Protection has issued open-end model forms and clauses.⁷

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Footnotes

- 1 12 C.F.R. § 1026.5(a)(1)(i)(A).
- 2 12 C.F.R. § 1026.5(a)(1)(ii), exempting various disclosures from the writing requirement and the requirement that disclosures be in a retainable form.
- 3 12 C.F.R. § 1026.5(a)(1)(iii), requiring compliance with certain statutory requirements with respect to all but certain exempted disclosures.
- 4 *Gambardella v. G. Fox & Co.*, 716 F.2d 104 (2d Cir. 1983).
- 5 12 C.F.R. § 1026.5(a)(3).
- 6 12 C.F.R. § 1026.5(a)(2).
- 7 12 C.F.R. Pt. 1026, App. G.

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a. In General

§ 33. Initial disclosures before account is opened

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West's Key Number Digest

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Forms

Forms relating to new account disclosures, generally, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

The Truth in Lending Act requires that a creditor, before opening any account under an open-end consumer credit plan, disclose a number of items to the person to whom credit is to be extended.¹

The creditor must disclose the conditions under which a finance charge may be imposed, including the time period (if any) within which any credit extended may be repaid without incurring a finance charge, except that the creditor may, at its election and without disclosure, impose no such finance charge if payment is received after the termination of such time period; if no such time period is provided, the creditor must disclose such fact.² A statement to the effect that finance charges are usually added to all balances over a specified amount but that when a customer reduces a large balance to within a specified sum during

the current billing period he or she is excused from paying a finance charge and that informs the customer of the balance and conditions under which the finance charge could be imposed is in compliance with the statute.³

The initial statement must disclose the method of determining the balance upon which a finance charge will be imposed.⁴ The statement must also disclose the method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge.⁵ Where one or more periodic rates may be used to compute the finance charge, the creditor must disclose each such rate, the range of balances to which it is applicable, and the corresponding, nominal annual percentage rate determined by multiplying the period rate by the number of periods in a year.⁶

Observation:

Where credit is extended under an open-end credit plan, the annual percentage rate is to be determined as the quotient (expressed as a percentage) of the total finance charge for the period to which it relates, divided by the amount upon which the finance charge for that period is based, multiplied by the number of such periods in a year.⁷

The disclosure must make an identification of other charges, which may be imposed as part of the credit plan, and their method of computation in accordance with regulations of the Bureau of Consumer Financial Protection.⁸

In cases where the credit is or will be secured, the disclosure must include a statement that a security interest has been or will be taken in the property purchased as part of the credit transaction or in property not purchased as part of the credit transaction identified by item or type.⁹ A bank's common-law right to set off the amount in its customer's checking account against the customer's debt is not a security interest and need not be disclosed under this provision.¹⁰

The creditor must also furnish a statement, in a form prescribed by regulation, of the protection provided by the Fair Credit Billing Act to an obligor and the creditor's responsibilities thereunder.¹¹

Finally, in the case of any account under an open-end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, the creditor must disclose any information which is required to be disclosed by statute¹² and which the Bureau determines is not described in any other paragraph of the statute.¹³

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Footnotes

- 1 15 U.S.C.A. § 1637(a).
- 2 15 U.S.C.A. § 1637(a)(1).
- 3 *Turoff v. May Co.*, 531 F.2d 1357, 21 Fed. R. Serv. 2d 503 (6th Cir. 1976).
- 4 15 U.S.C.A. § 1637(a)(2).
- 5 15 U.S.C.A. § 1637(a)(3).
- 6 15 U.S.C.A. § 1637(a)(4).

- 7 15 U.S.C.A. § 1606(a)(2).
As to accuracy of disclosure, see 15 U.S.C.A. § 1606(c) to (e).
8 15 U.S.C.A. § 1637(a)(5).
9 15 U.S.C.A. § 1637(a)(6).
10 Fletcher v. Rhode Island Hospital Trust Nat. Bank, 496 F.2d 927 (1st Cir. 1974).
11 15 U.S.C.A. § 1637(a)(7).
12 Referring to under 15 U.S.C.A. § 1637a(a), discussed in §§ 39 to 55.
13 15 U.S.C.A. § 1637(a)(8).

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a. In General

§ 34. Initial disclosures before account is opened—Time of disclosures

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The initial disclosure statement must be made by the creditor before opening any account under an open-end consumer credit plan.¹ As this requirement has been interpreted by Regulation Z, the general rule is that the creditor must furnish account-opening disclosures before the first transaction is made under the plan.² However, the regulation merely establishes a window during which a creditor may issue its disclosures and thus does not establish a credit transaction as a condition precedent which delays accrual of an action under the Truth in Lending Act for providing inadequate initial disclosures.³ The regulation also provides that charges under an open-end consumer credit plan may be disclosed after account opening but before the consumer agrees to pay or becomes obligated to pay for the charge provided they are disclosed at a time and in a manner that a consumer would be likely to notice them.⁴

Observation:

A creditor satisfies the statutory and regulatory requirements regarding disclosures in open-end credit agreements where the creditor, in a good-faith effort to comply with the Truth in Lending Act, delivers a disclosure statement to the borrower prior to the borrower's negotiation of the proceeds of a loan since the borrower is not foreclosed from shopping for better credit terms prior to negotiating the creditor's check.⁵

Periodic statements containing the required disclosures must be transmitted by the creditor to the obligor for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed.⁶

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Footnotes

1 [15 U.S.C.A. § 1637\(a\).](#)

2 [12 C.F.R. § 1026.5\(b\)\(1\)\(i\).](#)

A credit card issuer did not violate Truth in Lending Act provisions requiring it to make certain disclosures before opening any account under an open-end consumer credit plan by sending a consumer an unsolicited credit card in the mail where the consumer never activated the issuer's credit card, never incurred any fees on the issuer's credit card, and never made any charges to the issuer's credit card. [Muro v. Target Corp.](#), 580 F.3d 485, 74 Fed. R. Serv. 3d 502 (7th Cir. 2009).

3 [Follman v. World Financial Network Nat. Bank](#), 2013 WL 5295228 (E.D. N.Y. 2013).

4 [12 C.F.R. § 1026.5\(b\)\(1\)\(ii\).](#)

5 [Super Chief Credit Union v. Gilchrist](#), 232 Kan. 40, 653 P.2d 117 (1982).

6 [15 U.S.C.A. § 1637\(b\).](#)

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§ 35. Periodic statement disclosures

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West's Key Number Digest

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Forms

Forms relating to periodic statement disclosures, generally, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

The Truth in Lending Act closely regulates the disclosures to be made in periodic statements. The creditor of any account under an open-end consumer credit plan must transmit to the obligor for each billing cycle, at the end of which there is an outstanding balance in the account or with respect to which a finance charge is imposed, a statement setting forth each of the items of information enumerated to the extent applicable.¹ There are no exceptions to this requirement.² Periodic statements containing the required disclosures must be transmitted by the creditor to the obligor for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed.³

The creditor's disclosure statement must set forth the outstanding balance in the account at the beginning of the statement period.⁴ With certain exceptions, it must adequately⁵ set forth the amount and date of each extension of credit during the period

and a brief identification on or accompanying the statement of each extension of credit in a form sufficient to enable the obligor either to identify the transaction or to relate it to copies of sales vouchers or similar instruments previously furnished.⁶ The statement must show the total amount credited to the account during the statement period.⁷

The statement must set forth the amount of any finance charge added to the account during the statement period, itemized to show the amounts, if any, due to the application of percentage rates and the amount, if any, imposed as a minimum or fixed charge.⁸ Where one or more periodic rates may be used to compute the finance charge, the periodic statement must set forth each such rate, the range of balances to which it is applicable, and the corresponding nominal annual percentage rate.⁹ The periodic statement must set forth the total finance charge expressed as an annual percentage rate.¹⁰ Also, the statement must set forth the balance on which the finance charge was computed and a statement of how the balance was determined; if the balance is determined without first deducting all credits during the period, that fact and the amount of such payments must also be disclosed.¹¹

The statement must set forth the outstanding balance in the account at the end of the statement period.¹²

The statement must set forth the date by which or the period (if any) within which payment must be made to avoid additional finance charges, except that the creditor may, at his or her election and without disclosure, impose no such additional finance charge if payment is received after such date or the termination of such period.¹³

The statement must set forth the address to be used by the creditor for the purpose of receiving billing inquiries from the obligor.¹⁴

Also required are a minimum payment warning in a prescribed form,¹⁵ and certain disclosures regarding the late payment deadline, and any increase in interest rates for late payments.¹⁶

A creditor does not violate the Truth in Lending Act by failing to send periodic statements to the debtor's estate, following the debtor's death, as the creditor's duty to furnish periodic statements extends only to natural persons.¹⁷

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Footnotes

- 1 15 U.S.C.A. § 1637(b).
- 2 *Marcotte v. General Elec. Capital Services, Inc.*, 709 F. Supp. 2d 994 (S.D. Cal. 2010).
- 3 15 U.S.C.A. § 1637(b).
- 4 15 U.S.C.A. § 1637(b)(1).
- 5 *White v. Arlen Realty & Development Corp.*, 540 F.2d 645 (4th Cir. 1975).
- 6 15 U.S.C.A. § 1637(b)(2).
For implementing regulations, see 12 C.F.R. § 1026.8.
- 7 15 U.S.C.A. § 1637(b)(3).
- 8 15 U.S.C.A. § 1637(b)(4).
The seller of merchandise on charge accounts was not required by 15 U.S.C.A. § 1637(b)(4) to disclose its policy of giving trading stamps with each payment made on a charge account where the stamps had no effect on discounts or charges. *Turoff v. May Co.*, 531 F.2d 1357, 21 Fed. R. Serv. 2d 503 (6th Cir. 1976).
- 9 15 U.S.C.A. § 1637(b)(5).
- 10 15 U.S.C.A. § 1637(b)(6) (providing that such rate is the rate determined under 15 U.S.C.A. § 1606(a)(2)).
- 11 15 U.S.C.A. § 1637(b)(7).

- 12 15 U.S.C.A. § 1637(b)(8).
- 13 15 U.S.C.A. § 1637(b)(9).
- 14 15 U.S.C.A. § 1637(b)(10).
- 15 15 U.S.C.A. § 1637(b)(11).
- 16 15 U.S.C.A. § 1637(b)(12).
- 17 Hess v. Citibank, (South Dakota), N.A., 459 F.3d 837 (8th Cir. 2006).

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§ 36. Subsequent disclosure requirements

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[Validity, Construction, and Application of Truth in Lending Act \(TILA\) and Regulations Promulgated Thereunder—United States Supreme Court Cases, 67 A.L.R. Fed. 2d 567](#)

Forms

Forms relating to disclosing finance charge or disclosing change in terms, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

The regulation implementing the Truth in Lending Act in matters pertaining to disclosure requirements in open-end credit transactions contains a number of subsequent disclosure requirements.¹ These requirements pertain specifically to statements of billing rights,² disclosures for supplemental credit access devices and additional features,³ disclosure of a change in terms,⁴ disclosure of the amount of any finance charge imposed at the time of a transaction,⁵ disclosures upon renewal of a credit or charge card,⁶ disclosure of a change in the credit card account insurance provider,⁷ and disclosure of any increase in rates due to delinquency or default or as a penalty.⁸

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Footnotes

¹ 12 C.F.R. § 1026.9.

² 12 C.F.R. § 1026.9(a).

³ 12 C.F.R. § 1026.9(b).

⁴ 12 C.F.R. § 1026.9(c).

Although, pursuant to Regulation Z, notice of a change in credit terms generally has to be provided by a credit card issuer 15 days in advance of the effective date of the change, when a periodic rate or other finance charge is increased because of the consumer's delinquency or default, notice only need be given before the effective date of the change. [Chase Bank USA, N.A. v. McCoy](#), 131 S. Ct. 871, 178 L. Ed. 2d 716, 67 A.L.R. Fed. 2d 721 (2011).

As to consumer rejection of certain significant changes in terms, see [12 C.F.R. § 1026.9\(h\)](#).

⁵ 12 C.F.R. § 1026.9(d).

⁶ 15 U.S.C.A. § 1637(d), (e); 12 C.F.R. § 1026.9(e).

⁷ 15 U.S.C.A. § 1637(g)(1).

⁸ 12 C.F.R. § 1026.9(g).

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§ 37. Generally

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The Truth in Lending Act requires the disclosure of certain information in connection with credit and charge card applications and solicitations.¹ Under the Act and the implementing regulations, a credit or charge card issuer must provide the disclosures required by regulation on or with a solicitation² or an application to open a credit or charge card account.³ In addition to generally required disclosures,⁴ specific requirements apply with respect to direct mail and electronic applications and solicitations;⁵ telephone applications and solicitations;⁶ applications and solicitations made available to the general public or contained in catalogs, magazines, or other publications;⁷ and in-person applications and solicitations.⁸

If the amount of any fee required to be disclosed under [15 U.S.C.A. § 1637\(c\)](#), dealing with the disclosure in credit and charge card applications and solicitations, is determined on the basis of a percentage of another amount, the percentage used in making such determination and the identification of the amount against which such percentage is applied must be disclosed in lieu of the amount of such fee.⁹ If a credit or charge card issuer does not impose any fee required to be disclosed, [15 U.S.C.A. § 1637\(c\)](#) does not apply with respect to such issuer.¹⁰

Under the Truth in Lending Act and implementing regulations, a credit card issuer is required to disclose any fees it is permitted to impose under the applicable agreement but need not disclose all periodic fees not contemplated by the applicable agreement.¹¹ However, allegations that a credit card issuer solicited a card holder's business with an offer of a credit account having no annual

fee while intending to change the terms of the account shortly after the holder's acceptance of the offer supported a claim that the issuer's required disclosures of credit terms were misleading in violation of the Act, inasmuch as a reasonable consumer would expect that the stated terms were those that the card issuer intended to provide, even if those terms could change.¹²

Observation:

15 U.S.C.A. § 1637(c) to (f) supersede any provision of the law of any state relating to the disclosure of information in any credit or charge card application or solicitation which is subject to the requirements of 15 U.S.C.A. § 1637(c) or any renewal notice which is subject to the requirements of 15 U.S.C.A. § 1637(d) except that any state may employ or establish state laws for the purpose of enforcing the requirements of such sections.¹³

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Footnotes

- 1 15 U.S.C.A. § 1637(c).
- 2 The term "solicitation" is defined in 12 C.F.R. § 1026.60(a)(1).
- 3 15 U.S.C.A. § 1637(c)(4) to 15 U.S.C.A. § 1637(c)(8), 15 U.S.C.A. § 1637(e), (f); 12 C.F.R. § 1026.60(a). The information required to be disclosed under 15 U.S.C.A. § 1637(c)(1) must be provided to the charge card holder by the creditor which maintains such open-end consumer credit plan before the first extension of credit under the plan. 15 U.S.C.A. § 1637(c)(4)(D). As to the regulatory authority of the Bureau of Consumer Financial Protection in regard to the information required to be disclosed, see 15 U.S.C.A. § 1637(c)(5).
- 4 12 C.F.R. § 1026.60(b). As to tabular formatting of certain items, see 12 C.F.R. § 1026.60(a)(2); 12 C.F.R. Pt. 1026, App. G.
- 5 15 U.S.C.A. § 1637(c)(1), (c)(2)(C); 12 C.F.R. § 1026.60(c).
- 6 15 U.S.C.A. § 1637(c)(2); 12 C.F.R. § 1026.60(d).
- 7 15 U.S.C.A. § 1637(c)(3); 12 C.F.R. § 1026.60(e).
- 8 12 C.F.R. § 1026.60(f).
- 9 15 U.S.C.A. § 1637(e)(1).
- 10 15 U.S.C.A. § 1637(e)(2).
- 11 *Rossman v. Fleet Bank (R.I.)* Nat. Ass'n, 280 F.3d 384 (3d Cir. 2002).
- 12 *Rossman v. Fleet Bank (R.I.)* Nat. Ass'n, 280 F.3d 384 (3d Cir. 2002).
- 13 15 U.S.C.A. § 1610(e).

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The regulatory disclosure requirements as to disclosure of the terms of credit and charge card applications and solicitations¹ do not apply to:²

- home-equity plans accessible by a credit or charge card that are subject to certain regulatory requirements³ for home equity plans
- overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards
- lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines
- lines of credit accessed solely by account numbers
- additions of a credit or charge card to an existing open-end plan
- general purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account
- consumer-initiated requests for applications

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Footnotes

- 1 § 37.
- 2 12 C.F.R. § 1026.60(a)(5).
- 3 12 C.F.R. § 1026.40.

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West's Key Number Digest

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In the case of any open-end consumer credit plan which provides for any extension of credit that is secured by the consumer's principal dwelling, the creditor must make certain specific disclosures,¹ including any term which the Bureau of Consumer Financial Protection requires in regulations to be disclosed in addition to those stated in the governing statute,² in accordance with 15 U.S.C.A. § 1637a(b).³

Definition:

The term "principal dwelling" includes any second or vacation home of the consumer.⁴

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Footnotes

- 1 15 U.S.C.A. § 1637a(a)(1) to 15 U.S.C.A. § 1637a(a)(13).
- 2 15 U.S.C.A. § 1637a(a)(14).
- 3 15 U.S.C.A. § 1637a(a).
As to 15 U.S.C.A. § 1637a(b), see §§ 40, 52, 53.
- 4 15 U.S.C.A. § 1637a(d).

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§ 40. Annual percentage rate

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West's Key Number Digest

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Where an open-end consumer credit plan provides for an extension of credit which is secured by the consumer's principal dwelling, the creditor must disclose: (1) each annual percentage rate imposed in connection with the extension of credit under the plan; and (2) a statement that such rate does not include costs other than interest.¹

In the case of an open-end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling and which provides for variable rates of interest on credit extended under the plan, the creditor must provide extensive information as prescribed by statute.² Whether or not the disclosures required under [15 U.S.C.A. § 1637a\(a\)](#) are provided on the application form, the variable-rate information described in [15 U.S.C.A. § 1637a\(a\)\(2\)](#) may be provided separately from the other information required to be disclosed.³

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Footnotes

¹ [15 U.S.C.A. § 1637a\(a\)\(1\)](#).

² [15 U.S.C.A. § 1637a\(a\)\(2\)](#).

In preparing the table required under [15 U.S.C.A. § 1637a\(a\)\(2\)\(G\)](#), the creditor must consistently select one rate of interest for each year, and the manner of selecting the rate from year to year must be consistent with the plan. [15 U.S.C.A. § 1637a\(b\)\(3\)](#).

3 [15 U.S.C.A. § 1637a\(b\)\(2\)\(D\)](#).

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§ 41. Other fees imposed by creditor

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An itemization of any fees imposed by the creditor in connection with the availability or use of credit under an open-end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, including annual fees, application fees, transaction fees, and closing costs (including costs commonly described as "points"), and the time when such fees are payable, must be disclosed by the creditor.¹

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¹ 15 U.S.C.A. § 1637a(a)(3).

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§ 42. Estimates of fees that may be imposed by third parties

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West's Key Number Digest, Consumer Credit 52

A creditor, in the case of an open-end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, must provide an estimate, based on the creditor's experience with such plans and stated as a single amount or as a reasonable range of the aggregate amount of additional fees that may be imposed by third parties, such as governmental authorities, appraisers, and attorneys, in connection with opening an account under the plan.¹ The creditor must also provide a statement that the consumer may ask the creditor for a good-faith estimate by the creditor of the fees that may be imposed by third parties.²

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Footnotes

¹ 15 U.S.C.A. § 1637a(a)(4)(A).

² 15 U.S.C.A. § 1637a(a)(4)(B).

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§ 43. Statement of risk of loss of dwelling

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  51, 54

In the case of an open-end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, the creditor must provide a statement that any extension of credit under the plan is secured by the consumer's dwelling, and that in the event of any default, the consumer risks the loss of the dwelling.¹

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¹ [15 U.S.C.A. § 1637a\(a\)\(5\)](#).

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§ 44. Conditions to which disclosed terms are subject

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The creditor in an open-end consumer credit plan which provides for any extension of credit that is secured by the consumer's principal dwelling must provide a clear and conspicuous statement of the time by which an application must be submitted to obtain the terms disclosed or, if applicable, that the terms are subject to change.¹ The creditor must also provide a statement that the consumer may elect not to enter into an agreement to open an account under the plan if any term changes (other than a change contemplated by a variable feature of the plan) before any such agreement is final, and if the consumer makes such an election, the consumer is entitled to a refund of all fees paid in connection with the application.² Finally, a statement must be included that the consumer should make or otherwise retain a copy of information disclosed under the above provisions.³

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Footnotes

- ¹ 15 U.S.C.A. § 1637a(a)(6)(A).
- ² 15 U.S.C.A. § 1637a(a)(6)(B).
- ³ 15 U.S.C.A. § 1637a(a)(6)(C).

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§ 45. Rights of creditor regarding extensions of credit

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With any creditor which provides for any extension of credit which is secured by the consumer's principal dwelling, the creditor must include a statement that under certain conditions the creditor may terminate any account under the plan and require immediate repayment of any outstanding balance, prohibit any additional extension of credit to the account, or reduce the credit limit applicable to the account and that the consumer may receive, upon request, more specific information about the conditions under which the creditor may take any such actions.¹

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Footnotes

¹ [15 U.S.C.A. § 1637a\(a\)\(7\)](#).

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§ 46. Repayment options and minimum periodic payments

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The repayment options under an open-end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling must be stated by the creditor, including: (1) if applicable, any differences in repayment options with regard to any period during which additional extensions of credit may be obtained and any period during which the payment is required to be made and no additional extensions of credit may be obtained; (2) the length of any repayment period, including any differences in the length of any repayment period with regard to the periods described above; and (3) an explanation of how the amount of any minimum monthly or periodic payment will be determined under each such option, including any differences in the determination of any amount with regard to such periods.¹

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Footnotes

¹ [15 U.S.C.A. § 1637a\(a\)\(8\)](#).

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§ 47. Sample minimum payments and maximum repayment period

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An example, based on a \$10,000 outstanding balance and the interest rate (other than a rate not based on the index under the plan) which is, or was recently, in effect under an open-end consumer credit plan which provides for an extension of credit which is secured by the consumer's principal dwelling, must be provided by the creditor, showing the minimum monthly or periodic payment, and the time it would take to repay the entire \$10,000 if the consumer paid only the minimum periodic payments and obtained no additional extensions of credit.¹

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Footnotes

¹ 15 U.S.C.A. § 1637a(a)(9).

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§ 48. Balloon-payments statements

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 52

If, under any repayment option of an open-end consumer credit plan which provides for an extension of credit which is secured by the consumer's principal dwelling, the payment of not more than the minimum periodic payments required under the option over the length of the repayment period would not repay any of the principal balance or would repay less than the outstanding balance by the end of the period, as the case may be, the creditor must provide a statement of such fact, including an explicit statement that at the end of the repayment period a balloon payment would result which would be required to be paid in full at that time.¹

Definition:

The term "balloon payment" means, with respect to any open-end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling, any repayment option under which the account holder is required to repay the entire amount of an outstanding balance as of a specified date or at the end of a specified period of time, as determined in accordance with the terms of the agreement pursuant to which such credit is extended, and the aggregate amount of the minimum periodic payments required would not fully amortize such outstanding balance by the date or at the end of the period.²



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Footnotes

[1](#) [15 U.S.C.A. § 1637a\(a\)\(10\).](#)

[2](#) [15 U.S.C.A. § 1665b\(f\).](#)

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17 Am. Jur. 2d Consumer Protection § 49

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§ 49. Negative amortization

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 52

If applicable, the creditor in the case of an open-end consumer credit plan which provides for an extension of credit which is secured by the consumer's principal dwelling must include a statement that: (1) any limitation in the plan and the amount of any increase in the minimum payment may result in negative amortization; (2) negative amortization increases the outstanding principal balance of the account; and (3) negative amortization reduces the consumer's equity in the consumer's dwelling.¹

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Footnotes

¹ 15 U.S.C.A. § 1637a(a)(11).

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§ 50. Limitations and minimum-amount requirements on extension of credit

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The creditor must disclose any limitation contained in an open-end consumer credit plan which provides for an extension of credit which is secured by the consumer's principal dwelling on the number of extensions of credit and the amount of credit which may be obtained during any month or other defined time period.¹ The creditor must also disclose any requirement which establishes a minimum amount for the initial extension of credit to an account under the plan, any subsequent extension of credit to an account under the plan, or any outstanding balance of an account under the plan.²

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Footnotes

¹ 15 U.S.C.A. § 1637a(a)(12)(A).

² 15 U.S.C.A. § 1637a(a)(12)(B).

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§ 51. Statement regarding consultation of tax advisor

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 50

The creditor in the case of an open-end consumer credit plan which provides for an extension of credit which is secured by the consumer's principal dwelling must include a statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan and that in any case in which the extension of credit exceeds the dwelling's fair market value (as defined under the Internal Revenue Code), the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for federal income tax purposes.¹

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¹ 15 U.S.C.A. § 1637a(a)(13).

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§ 52. Time of disclosure

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West's Key Number Digest

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The disclosures required in the case of an open-end consumer credit plan which provides for an extension of credit which is secured by the consumer's principal dwelling and the pamphlets required under [15 U.S.C.A. § 1637a\(e\)](#)¹ must be provided to any consumer at the time the creditor distributes an application to establish an account under the plan to the consumer.²

In the case of telephone applications, applications contained in magazines or other publications, or applications provided by a third party, the disclosures required in the case of an open-end consumer credit plan which provides for an extension of credit which is secured by the consumer's principal residence and the pamphlet required under [15 U.S.C.A. § 1637a\(e\)](#)³ must be provided by the creditor before the end of the three-day period beginning on the date the creditor receives a completed application from a consumer.⁴

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Footnotes

¹ [§ 55.](#)

² [15 U.S.C.A. § 1637a\(b\)\(1\)\(A\).](#)

3 § 55.
4 15 U.S.C.A. § 1637a(b)(1)(B).

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§ 53. Form of disclosure

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Except as provided with respect to disclosures in connection with telephone, publications, and third-party applications,¹ the disclosures required must be provided on or with any application to establish an account under an open-end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling.² These disclosures must be conspicuously segregated from all other terms, data, or additional information provided in connection with the application, either by grouping the disclosures separately on the application form or by providing the disclosures on a separate form, in accordance with the regulations of the Bureau of Consumer Financial Protection.³ The disclosures required by [15 U.S.C.A. § 1637a\(a\)\(5\)](#) to [15 U.S.C.A. § 1637a\(a\)\(7\)](#)⁴ must precede all of the other required disclosures.⁵

Observation:

Whether or not the disclosures required under [15 U.S.C.A. § 1637a\(a\)](#) are provided on the application form, the variable-rate information described in [15 U.S.C.A. § 1637a\(a\)\(2\)](#)⁶ may be provided separately from the other information required to be disclosed.⁷



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Footnotes

- 1 § 52.
- 2 15 U.S.C.A. § 1637a(b)(2)(A).
- 3 15 U.S.C.A. § 1637a(b)(2)(B).
- 4 §§ 43 to 45.
- 5 15 U.S.C.A. § 1637a(b)(2)(C).
- 6 § 40.
- 7 15 U.S.C.A. § 1637a(b)(2)(D).

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§ 54. Third-party applications

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  50

In the case of an application to open an account under an open-end consumer credit plan which provides for an extension of credit which is secured by the consumer's principal dwelling, which is provided to a consumer by any person other than the creditor, such person must provide the consumer with the disclosures required under 16 U.S.C.A. § 1637a(a)¹ with respect to the plan in accordance with 16 U.S.C.A. § 1637a(b)² and the pamphlet required under [15 U.S.C.A. § 1637a\(e\)](#),³ or if such person cannot provide specific terms about the plan because specific information about the plan terms is not available, no refundable fee may be imposed in connection with the application before the end of the three-day period beginning on the date the consumer receives the required disclosures.⁴

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Footnotes

- ¹ §§ [39](#) to [55](#).
- ² §§ [52](#), [53](#).
- ³ [15 U.S.C.A. § 1637a\(c\)\(1\)](#).
- ⁴ [15 U.S.C.A. § 1637a\(c\)\(2\)](#).

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§ 55. Providing pamphlet

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In addition to the disclosures required under [15 U.S.C.A. § 1637a\(a\)](#) with respect to an application to open an account under any open-end consumer credit plan which provides for an extension of credit which is secured by the consumer's principal dwelling, a creditor or other person providing such disclosures to the consumer must provide a pamphlet published by the Bureau of Consumer Financial Protection pursuant to section 4 of the Home Equity Consumer Protection Act of 1988¹ or any pamphlet which provides substantially similar information to the information described in the Act as determined by the Bureau.²

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Footnotes

¹ [Pub. L. No. 100-709, § 4, 102 Stat. 4733.](#)

² [15 U.S.C.A. § 1637a\(e\).](#)

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(2) Other Requirements

§ 56. Index requirement

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 50

In the case of extensions of credit under an open-end consumer credit plan which are subject to a variable rate and are secured by a consumer's principal dwelling, the index or other rate of interest to which changes in the annual percentage rate are related must be based on an index or rate of interest that is publicly available and is not under the control of the creditor.¹

Definition:

The term "principal dwelling" includes any second or vacation home of the consumer.²

Footnotes

- 1 15 U.S.C.A. § 1647(a).
2 15 U.S.C.A. § 1637a(d).

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§ 57. Grounds for acceleration of outstanding balance

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A.L.R. Library

[What constitutes violation of sec. 106\(e\) of Truth in Lending Act \(15 U.S.C.A. sec. 1605\(e\)\) relating to exemption of certain costs or fees from computation of finance charge in extensions of credit secured by interest in real property, 115 A.L.R. Fed. 453](#)

A creditor may not unilaterally terminate any account under an open-end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling and require the immediate payment of any outstanding balance at such time except in the case of: (1) fraud or material misrepresentation on the part of the consumer in connection with the account; (2) failure by the consumer to meet the repayment terms of the agreement for any outstanding balance; or (3) any other action or failure to act by the consumer which adversely affects the creditor's security for the account or any right of the creditor in such security.¹

Caution:

This provision does not apply to reverse mortgages.²

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Footnotes

- 1 15 U.S.C.A. § 1647(b).
2 15 U.S.C.A. § 1647(b).

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§ 58. Change in terms

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No open-end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling may contain a provision which permits a creditor to change unilaterally any term required to be disclosed under [15 U.S.C.A. § 1637a\(a\)](#) or any other term except a change in insignificant terms such as the address of the creditor for billing purposes.¹ However, a creditor may make any of the following changes:²

- (1) change the index and margin applicable to extensions of credit under the plan if the index used by the creditor is no longer available and the substitute index and margin would result in a substantially similar interest rate;
- (2) prohibit additional extensions of credit or reduce the credit limit applicable to an account under the plan during any period in which the value of the consumer's principal dwelling which secures any outstanding balance is significantly less than the original appraisal value of the dwelling;
- (3) prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which the creditor has reason to believe that the consumer will be unable to comply with the repayment requirements of the account due to a material change in the consumer's financial circumstances;

- (4) prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which the consumer is in default with respect to any material obligation of the consumer under the agreement;³
- (5) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which the creditor is precluded by government action from imposing the annual percentage rate provided for in the account agreement or any government action is in effect which adversely affects the priority of the creditor's security interest in the account to the extent that the value of the creditor's secured interest in the property is less than 120% of the amount of the credit limit applicable to the account; and
- (6) any change that will benefit the consumer.

Definition:

A change is deemed to benefit the consumer if the change is unequivocally beneficial to the borrower, and the change is beneficial through the entire term of the agreement.⁴

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Footnotes

- 1 15 U.S.C.A. § 1647(c)(1).
- 2 15 U.S.C.A. § 1647(c)(2).
- 3 15 U.S.C.A. § 1647(c)(3) provides that upon request of the consumer and at the time an agreement is entered into by a consumer to open an account under an open-end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling, the consumer must be given a list of the categories of contract obligations which are deemed by the creditor to be material obligations of the consumer under the agreement.
- 4 15 U.S.C.A. § 1647(c)(4)(A).

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§ 59. Change in terms—After application

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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West's Key Number Digest, Consumer Credit  51

If any term or condition described in [15 U.S.C.A. § 1637a\(a\)](#)¹ which is disclosed to a consumer in connection with an application to open an account under an open-end consumer credit plan which provides for an extension of credit which is secured by the consumer's principal dwelling (other than a variable feature of the plan) changes before the account is open and if, as a result of such change, the consumer elects not to enter into the plan agreement, the creditor must refund all fees paid by the consumer in connection with the application.²

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¹ Discussed in §§ 39 to 55.

² [15 U.S.C.A. § 1647\(d\)](#).

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§ 60. Change in terms—Refunds and imposition of nonrefundable fees

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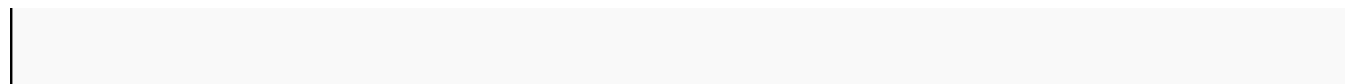
West's Key Number Digest

West's Key Number Digest, Consumer Credit 53

No nonrefundable fee may be imposed by a creditor or any other person in connection with any application by a consumer to establish an account under an open-end consumer credit plan which provides for extensions of credit which are secured by a consumer's principal dwelling before the end of the three-day period beginning on the date such consumer receives the disclosure required under [15 U.S.C.A. § 1637a\(a\)](#)¹ and the pamphlet required under [15 U.S.C.A. § 1637a\(e\)](#)² with respect to the application.³

Definition:

For purposes of determining when a nonrefundable fee may be imposed if the disclosures and pamphlet referred to are mailed to the consumer, the date of the receipt of the disclosures by the consumer is deemed to be three business days after the date of mailing by the creditor.⁴



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Footnotes

- | | |
|---|---------------------------|
| 1 | §§ 39 to 55. |
| 2 | § 55. |
| 3 | 15 U.S.C.A. § 1647(e)(1). |
| 4 | 15 U.S.C.A. § 1647(e)(2). |

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§ 61. Generally

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Forms

Forms relating to closed-end transactions, generally, see Am. Jur. Legal Forms 2d—Consumer Credit Protection Acts; Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

The Truth in Lending Act requires certain disclosures in connection with consumer credit transactions other than under an open-end credit plan.¹ Such transactions are usually referred to as "closed-end credit" and take the form of installment contracts or loans extended by banks, consumer finance companies, and other lending institutions.²

Observation:

The intent of the parties plays an important part in the determination whether a credit transaction is a closed-end transaction. Thus, although a buyer may have entered into purchase contracts which have various characteristics of a revolving charge, where the intent of the parties appears to have been to create a closed-end consumer credit transaction, that intent will govern the contract.³

The Bureau of Consumer Financial Protection is authorized to publish model disclosure forms and clauses, which must use readily understandable language.⁴ Such forms relating to closed-end credit plans have been published by the Bureau.⁵

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Footnotes

- 1 15 U.S.C.A. § 1638.
- 2 Wise Furniture v. Dehning, 343 N.W.2d 26 (Minn. 1984).
- 3 Wise Furniture v. Dehning, 343 N.W.2d 26 (Minn. 1984).
- 4 § 224.
- 5 12 C.F.R. Pt. 1026, App. H.

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§ 62. Method of making disclosure; oral disclosure

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In speaking to the method of making disclosure, the regulations require the creditor to make written disclosures "in a form that the consumer may keep."¹ The debtor's signature is not required on either the original or copy of the disclosure statement although such signature will create a rebuttable presumption of delivery thereof.²

Where a consumer makes an inquiry about the cost of closed-end credit, in an oral response thereto, only the annual percentage rate may be stated except that a simple annual rate or periodic rate also may be stated if it is applied to an unpaid balance.³

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Footnotes

- ¹ 12 C.F.R. § 1026.17(a)(1).
- ² *Gillard v. Aetna Finance Co., Inc.*, 414 F. Supp. 737 (E.D. La. 1976).
- ³ 12 C.F.R. § 1026.26(b) (providing further that if the annual percentage rate cannot be determined in advance, the annual percentage rate for a sample transaction must be stated, and other cost information for the consumer's specific transaction may be given).

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§ 63. Time of disclosure

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 57

Forms

Forms relating to time of disclosure, generally, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

The disclosures required in closed-end consumer credit transactions must be made before the credit is extended.¹

Observation:

The regulation states the rule as requiring disclosures before consummation of the transaction.²

A transaction is consummated at the time that a contractual relationship is created, so that disclosure is necessary prior to the creation thereof.³ Credit is extended when credit terms are agreed to, and at that point, the seller in a credit sale must make required disclosures.⁴

Observation:

A loan transaction is not generally consummated at the time that the borrower signs a loan application; consequently, a lender need not provide required disclosures when the loan application is signed.⁵

Except for private education loan disclosures, if disclosures are given before the date of consummation of a transaction, and a subsequent event makes them inaccurate, the creditor may be required to disclose the changed terms before consummation.⁶

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Footnotes

- 1 [15 U.S.C.A. § 1638\(b\)\(1\).](#)
In closed-end transactions, such as car loans, required disclosures under the Truth in Lending Act are to be made as of the time that credit is extended, and it is as of that time that adequacy and accuracy of the disclosures are measured. [Begala v. PNC Bank, Ohio, Nat. Ass'n, 163 F.3d 948, 1998 FED App. 0378P \(6th Cir. 1998\)](#), as amended, (Mar. 26, 1999).
- 2 [12 C.F.R. § 1026.17\(b\).](#)
- 3 [Postow v. Oriental Bldg. Ass'n, 390 F. Supp. 1130 \(D.D.C. 1975\).](#)
- 4 [Hardin v. Cliff Pettit Motors, Inc., 407 F. Supp. 297, 19 U.C.C. Rep. Serv. 421 \(E.D. Tenn. 1976\).](#)
- 5 [Cades v. H & R Block, Inc., 43 F.3d 869 \(4th Cir. 1994\).](#)
- 6 [12 C.F.R. § 1026.17\(f\).](#)

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§ 64. Form of disclosure

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Information required by the Truth in Lending Act must be disclosed clearly and conspicuously in accordance with regulations of the Bureau of Consumer Financial Protection.¹ The terms "annual percentage rate" and "finance charge" must be disclosed more conspicuously than other terms, data, or information provided in connection with a transaction except information relating to the identity of the creditor.² Regulations may permit the use of terminology different from that employed in the Act if it conveys substantially the same meaning.³

Clear and conspicuous disclosures are those that a reasonable debtor would notice and understand.⁴ Information is improperly disclosed where the terms "finance charge" and "annual percentage rate" are printed in capital letters like other required disclosures.⁵

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Footnotes

¹ 15 U.S.C.A. § 1632(a).

² 15 U.S.C.A. § 1632(a).

The requirement that the term "annual percentage rate" be printed in a disclosure statement more conspicuously than other required terminology was not satisfied, even though the term was printed in all capital letters in boldface type, where over 30 other terms and phrases appearing on the disclosure statement were also printed in capital letters and in identical size, style, and boldness of type. [Herrera v. First Northern Sav. and Loan Ass'n](#), 805 F.2d 896, 6 Fed. R. Serv. 3d 878 (10th Cir. 1986).

3 15 U.S.C.A. § 1632(a).

4 [Barrer v. Chase Bank USA, N.A.](#), 566 F.3d 883 (9th Cir. 2009).

5 [Powers v. Sims and Levin Realtors](#), 396 F. Supp. 12 (E.D. Va. 1975), judgment aff'd in part, rev'd in part on other grounds, 542 F.2d 1216 (4th Cir. 1976) (rejected on other grounds by, [Tarplain v. Baker Ford, Inc.](#), 466 F. Supp. 1340 (D.R.I. 1979)); [Jefferson v. Mitchell Select Furniture Co., Inc.](#), 56 Ala. App. 259, 321 So. 2d 216, 18 U.C.C. Rep. Serv. 431 (Civ. App. 1975).

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§ 65. Arrangement of disclosures

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 51

Forms

Forms relating to arrangement of disclosures, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

The Truth in Lending Act provides that, except for the disclosure of the identity of the creditor, required disclosures must be conspicuously segregated from all other terms, data, or information provided in connection with a transaction, including any computations or itemization.¹ The implementing regulation provides that the disclosures must be grouped together, must be segregated from everything else, and must not contain any information not directly related to the disclosures specifically enumerated by regulation.² Certain disclosures may be made together with or separately from other required disclosures.³ The itemization of the amount financed as required by regulation must be separate from the other disclosures under that regulation except for private education loan disclosures.⁴ A disclosure statement meets the requirements where items are grouped together in a logical sequence.⁵

Observation:

The provision permitting a creditor to make deletions in or rearrange the format of model disclosure forms or clauses goes on to provide that this may be done if it does not affect, inter alia, the "meaningful sequence" of the disclosure.⁶

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Footnotes

- 1 [15 U.S.C.A. § 1638\(b\)\(1\)](#).
Regulations of the Bureau of Consumer Financial Protection need not require that disclosures be made in the order set forth in the Act. [15 U.S.C.A. § 1632\(a\)](#).
- 2 [12 C.F.R. § 1026.17\(a\)\(1\)](#).
- 3 [12 C.F.R. § 1026.17\(a\)\(1\)](#).
- 4 [12 C.F.R. § 1026.17\(a\)\(1\)](#), referring to [12 C.F.R. § 1026.18\(c\)\(1\)](#) as containing the disclosures which must be kept separate from other disclosures set forth in [12 C.F.R. § 1026.18](#).
- 5 [Moore v. Tower Loan of Mississippi, Inc., 487 F. Supp. 352 \(N.D. Miss. 1980\)](#).
- 6 [15 U.S.C.A. § 1604\(b\)](#).

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§ 66. Mail and telephone transactions

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 51

Forms

Forms relating to mail or telephone order disclosures, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

Where a creditor receives a purchase order by mail or telephone without personal solicitation, and the cash price and the total sale price and the terms of financing, including the annual percentage rate, are set forth in the creditor's catalog or other printed material distributed to the public, the required disclosures may be made at any time not later than the date the first payment is due.¹ Similarly, disclosures may be made at any time not later than the date the first payment is due where a creditor receives a request for a loan by mail or telephone without personal solicitation, and the terms of financing, including the annual percentage rate for representative amounts of credit, are set forth in printed material distributed to the public or in the contract of loan or other printed material delivered to the obligor.²

Footnotes

1 15 U.S.C.A. § 1638(c)(1).

2 15 U.S.C.A. § 1638(c)(2).

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§ 67. Series of sales

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Forms

Forms relating to timing of disclosures in series of transactions, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

Where a credit sale is one of a series of credit sales made under an agreement for the addition of a deferred payment price of a subsequent sale to an existing outstanding balance, the required disclosures for the particular sale may be made at any time not later than the date the first payment for that sale is due, if the consumer has approved in writing both the annual percentage rate and the method of computing the finance charge, and the creditor retains no security interest in any property as to which he or she has received payments aggregating the amount of the sales price including any finance charges attributable thereto.¹

Definition:

For the purposes of the statute, where items are purchased on different dates, the first purchased is deemed the first paid for, and where items are purchased on the same date, the lowest priced is deemed first paid for.²

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Footnotes

- 1 15 U.S.C.A. § 1638(d).
2 15 U.S.C.A. § 1638(d).

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§ 68. Series of advances under credit commitment

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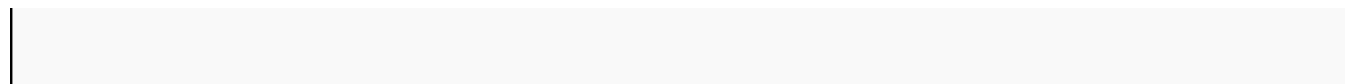
West's Key Number Digest

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The Truth in Lending Act requires disclosures for each consumer credit transaction under a closed-end credit plan.¹ The implementing regulation, in imposing disclosure requirements, provides that a series of advances under an agreement to extend credit up to a certain amount may be considered as one transaction.² Also, when a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.³

Observation:

Where a loan agreement did not call for a series of advances on single loan commitments but simply created a line of credit upon which separate loans would be made with the annual percentage rate, the finance charge and other terms of the subsequent advances being different from those of the original loan agreement constituted new credit transactions and required additional disclosures.⁴



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Footnotes

- 1 [15 U.S.C.A. § 1638\(a\).](#)
- 2 [12 C.F.R. § 1026.17\(c\)\(6\)\(i\).](#)
- 3 [12 C.F.R. § 1026.17\(c\)\(6\)\(ii\).](#)
- 4 [Lowery v. Finance America Corp., 32 N.C. App. 174, 231 S.E.2d 904 \(1977\).](#)

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§ 69. Private education loans

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An extensive set of disclosures is required in private education loan applications and solicitations,¹ as well as contemporaneously with the approval of a private education loan application and before the loan transaction is consummated,² and at the time of private education loan consummation.³ Also, before a private educational lender may consummate a private education loan with respect to a student attending an institution of higher education, the lender is required to obtain from the applicant for the private education loan a specified form developed by the Secretary of Education, signed by the applicant, in written or electronic form;⁴ however, a private educational lender has no liability under the general enforcement provision⁵ for failure to comply with this requirement.⁶

CUMULATIVE SUPPLEMENT

Statutes:

[15 U.S.C.A. § 1650\(a\)](#) was amended effective May 24, 2018, by redesignating paragraphs (1) through (8) as paragraphs (2) through (9), and by adding a new paragraph (1).

[END OF SUPPLEMENT]

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Footnotes

- 1 15 U.S.C.A. § 1638(e)(1).
2 15 U.S.C.A. § 1638(e)(2).
3 15 U.S.C.A. § 1638(e)(4).
 As to format of disclosures, see 15 U.S.C.A. § 1638(e)(5).
 As to regulatory disclosure requirements, see 15 U.S.C.A. § 1638(e)(9).
4 15 U.S.C.A. § 1638(e)(3)(A).
5 15 U.S.C.A. § 1640.
6 15 U.S.C.A. § 1640(j).
 For the definition of "private educational lender," see 15 U.S.C.A. § 1650(a)(6).

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§ 70. Identity of creditor

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West's Key Number Digest, Consumer Credit 51

In a closed-end consumer credit transaction, the identity of the creditor required to make disclosure must be disclosed.¹

Observation:

A common sense approach, rather than a technical approach, is used in determining whether there has been a meaningful disclosure of the identity of the creditor.²

The failure to disclose all third-party lenders was not a material nondisclosure in a closed-end transaction where there were multiple creditors since only the creditor making the disclosures had to be identified on the disclosure statement; therefore, the borrower could not rescind a loan secured by a deed of trust on the borrower's home.³

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Footnotes

- 1 15 U.S.C.A. § 1638(a)(1).
- 2 Brooks v. Maryville Loan and Finance Co., 679 F.2d 837 (11th Cir. 1982).
- 3 King v. State of Cal., 784 F.2d 910 (9th Cir. 1986) (rejected on other grounds by, Baldwin v. Laurel Ford Lincoln-Mercury, Inc., 32 F. Supp. 2d 894 (S.D. Miss. 1998)).

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§ 71. Amount financed; computation

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Forms

Forms relating to disclosing amount of credit available, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

The creditor in a consumer credit transaction under a closed-end credit plan must disclose the "amount financed," using that term, which must be the amount of credit of which the consumer has actual use.¹ A descriptive explanation of the quoted term must be provided,² which may take a form such as "the amount of credit provided to you or on your behalf."³ The amount financed is calculated as prescribed by statute,⁴ but the computations need not be disclosed and must not be disclosed with those disclosures which are required to be conspicuously segregated.⁵

A disclosure of the amount of the loan is sufficient, where the disclosure statement lists only the total amount of the loan and does not break this down into refinancing of an earlier loan, interest due, and additional cash paid to the borrower; the use of

the general term "loan proceeds" in disclosing the amount financed is permissible rather than disclosure of the actual proceeds of the loan.⁶

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Footnotes

- 1 15 U.S.C.A. § 1638(a)(2)(A).
- 2 15 U.S.C.A. § 1638(a)(8).
- 3 12 C.F.R. § 1026.18(b).
- 4 15 U.S.C.A. § 1638(a)(2)(A).
- 5 15 U.S.C.A. § 1638(a)(2)(A).
- As to conspicuous segregation, see § 65.
- 6 *Pridegon v. Gates Credit Union*, 683 F.2d 182, 34 U.C.C. Rep. Serv. 717 (7th Cir. 1982).

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§ 72. Amount financed; computation—Itemization

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  51

A creditor must provide a statement of the consumer's right to obtain, upon a written request, a written itemization of the amount financed.¹ The statement must include spaces for a "yes" and "no" indication to be initialed by the consumer to indicate whether the consumer wants a written itemization of the amount financed.² Upon receiving an affirmative indication, the creditor must provide, at the time other disclosures are required to be furnished, a written "itemization of the amount financed," that is, a disclosure of the amount that is or will be paid directly to the consumer; the amount that is or will be credited to the consumer's account to discharge obligations owed to the creditor; each amount, as well as the total amount, that is or will be paid to third persons by the creditor on the consumer's behalf, together with an identification of or reference to the third person; and the prepaid finance charge.³

Observation:

A creditor which charged the purchaser of an automobile \$1 to list the creditor's lien on the certificate of title was required to disclose the \$1 fee not only in the section of the installment sales contract entitled "itemization of amount financed" but also in the space marked "filing fees."⁴



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- 1 15 U.S.C.A. § 1638(a)(2)(B).
- 2 15 U.S.C.A. § 1638(a)(2)(B).
- 3 15 U.S.C.A. § 1638(a)(2)(B).
- 4 *Lewis v. Award Dodge, Inc.*, 620 F. Supp. 135 (D. Conn. 1985).

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§ 73. Finance charge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 52

Forms

Forms relating to closed-end transactions, generally, see Am. Jur. Legal Forms 2d—Consumer Credit Protection Acts; Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

Under the Truth in Lending Act, a creditor in a consumer credit transaction under a closed-end credit plan must disclose the "finance charge" not itemized, using that term.¹ A descriptive explanation of the quoted term must be included,² which may take a form such as "the dollar amount the credit will cost you."³

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Footnotes

¹ 15 U.S.C.A. § 1638(a)(3).

2 15 U.S.C.A. § 1638(a)(8).
3 12 C.F.R. § 1026.18(d).

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§ 74. Annual percentage rate

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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West's Key Number Digest, Consumer Credit 52

Forms

Forms relating to annual percentage rate, generally, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [\[Westlaw® Search Query\]](#)

Forms relating to change in interest rate, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [\[Westlaw® Search Query\]](#)

The creditor in a closed-end consumer credit transaction must disclose the finance charge expressed as an "annual percentage rate," using that term.¹ A descriptive explanation of the quoted phrase must be included.² However, this disclosure is not required if the amount financed does not exceed \$75 and the finance charge does not exceed \$5 or if the amount financed exceeds \$75, and the finance charge does not exceed \$7.50.³

A disclosure of the annual percentage rate is adequate where the disclosure states the finance charges in terms of the annual percentage rate even though the rate of interest is computed on the assumption that all payments of principal and interest will

be made on, not before or after, due dates.⁴ On the other hand, a disclosure statement is inadequate where, among other things, it substantially understates the annual percentage rate because of an improper method of calculation thereof.⁵ Moreover, a disclosure statement is inadequate where it substantially overstates the yearly cost of the loan.⁶

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Footnotes

- 1 15 U.S.C.A. § 1638(a)(4).
As to computation of the annual percentage rate, see 15 U.S.C.A. § 1606(a), (b).
As to accuracy of disclosure, see 15 U.S.C.A. § 1606(c) to (e).
- 2 15 U.S.C.A. § 1638(a)(8).
- 3 15 U.S.C.A. § 1638(a)(4).
- 4 Anderson v. Southern Discount Co., 582 F.2d 883 (4th Cir. 1978).
- 5 Ljepava v. M. L. S. C. Properties, Inc., 511 F.2d 935 (9th Cir. 1975).
- 6 Amparan v. Plaza Home Mortg., Inc., 678 F. Supp. 2d 961 (N.D. Cal. 2008).

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§ 75. Total sale price

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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In a sale of property or services in which the seller is the creditor required to make disclosure, he or she must, in a closed-end consumer credit transaction, disclose the "total sale price," using that term, which must be the total of the cash price of the property or services, additional charges, and the finance charge.¹ A descriptive explanation of the quoted term must be included, which explanation must include reference to the amount of the down payment.²

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Footnotes

¹ 15 U.S.C.A. § 1638(a)(7).

² 15 U.S.C.A. § 1638(a)(8).

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§ 76. Total of payments

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West's Key Number Digest

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The creditor in a closed-end consumer credit transaction must disclose the sum of the amount financed and the finance charge, which must be termed the "total of payments."¹ A descriptive explanation of the quoted term must be included,² which may take the form of "the amount you will have paid when you have made all scheduled payments."³

A lender's disclosure statement is not deficient under the Act for burdening the consumer with having to make a simple arithmetical calculation to ascertain the total number of payments on a loan where the statement discloses a number of payments at one amount and one final payment at another amount.⁴

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Footnotes

- ¹ 15 U.S.C.A. § 1638(a)(5).
- ² 15 U.S.C.A. § 1638(a)(8).
- ³ 12 C.F.R. § 1026.18(h).
- ⁴ *Jasper County Sav. Bank v. Gilbert*, 328 N.W.2d 287 (Iowa 1982).

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§ 77. Schedule of payments

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The creditor in a closed-end consumer credit transaction must state clearly on the disclosure statement¹ the number, amount, and due dates or period of payments scheduled to repay the total of payments.² A lender's compliance with this requirement is evaluated objectively by determining whether a reasonable borrower, or a hypothetical average borrower who is neither particularly sophisticated nor particularly dense, would be confused about the timing of the payments.³ Depending on the facts and circumstances involved, payment schedules have been examined by the court and found to be adequate⁴ or inadequate.⁵

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Footnotes

- ¹ Hamm v. Ameriquest Mortg. Co., 506 F.3d 525 (7th Cir. 2007).
- ² 15 U.S.C.A. § 1638(a)(6).
- ³ Conrad v. Farmers and Merchants Bank, 762 F. Supp. 2d 843 (W.D. Va. 2011).
- ⁴ In re DiVittorio, 670 F.3d 273 (1st Cir. 2012); Bailey v. Defenbaugh & Co. of Cleveland, Inc., 513 F. Supp. 232 (N.D. Miss. 1981); Conrad v. Farmers and Merchants Bank, 762 F. Supp. 2d 843 (W.D. Va. 2011).
Oral statements of borrowers' mortgage broker, stating that a lender's loan would lower their monthly interest rate and convert to a fixed rate if they timely made payments for one year, did not subvert the plain language

5 of the creditor's conspicuous written disclosures of the material terms of the mortgage loan and render those disclosures unclear. [Nieskens v. Peter](#), 2010 WL 1626902 (D. Minn. 2010).
[Hamm v. Ameriquest Mortg. Co.](#), 506 F.3d 525 (7th Cir. 2007); [Sambolin v. Klein Sales Co.](#), 422 F. Supp. 625 (S.D. N.Y. 1976); [Lowery v. Finance America Corp.](#), 32 N.C. App. 174, 231 S.E.2d 904 (1977).

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§ 78. Schedule of payments—Demand feature; varied payments

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Forms

Forms relating to disclosure of demand provision, generally, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

If an obligation has a demand feature, that fact must be disclosed.¹ When the disclosure of a demand feature is based on an assumed maturity of one year, that fact must be disclosed.² In a demand obligation with no alternate maturity date, the creditor may comply with disclosure requirements by disclosing explicitly³ the due dates or payment periods of any scheduled interest payments for the first year.⁴ In a transaction in which a series of payments varies because a finance charge is applied to the unpaid principal balance, the creditor may comply with payment-schedule requirements by disclosing the dollar amounts of the largest and smallest payments in the series and a reference to the variations in the other payments in the series.⁵

Footnotes

1 [12 C.F.R. § 1026.18\(i\).](#)

2 [12 C.F.R. § 1026.18\(i\).](#)

If an obligation is payable on demand, the creditor must make the disclosures based on an assumed maturity of one year. If an alternate maturity date is stated in the legal obligation between the parties, the disclosures must be based on that date. [12 C.F.R. § 1026.17\(c\)\(5\).](#)

3 [Ware v. Indymac Bank, FSB, 534 F. Supp. 2d 835 \(N.D. Ill. 2008\).](#)

4 [12 C.F.R. § 1026.18\(g\)\(1\).](#)

A lender's payment disclosure statement to the borrower of a home refinancing loan indicated that loan payments were due in monthly intervals, and thus, the statement complied with the Truth in Lending Act's disclosure requirements where any reasonable consumer would have interpreted the statement to require that the borrower repay the loan in monthly installments, in the amounts listed, beginning on the specific dates provided in statement, and the statement specifically indicated that payments were due "monthly beginning." [Little v. Bank of America, N.A., 769 F. Supp. 2d 954 \(E.D. Va. 2011\).](#)

A mortgage lender, the lender's assignees, the loan servicer, and the Mortgage Electronic Registration System (MERS) violated the disclosure statement requirement by failing to disclose to borrowers either the frequency of payments or the specific due date for each individual payment. [Iroanyah v. Bank of America, N.A., 851 F. Supp. 2d 1115 \(N.D. Ill. 2012\).](#)

A mortgage lender violated the Truth in Lending Act by failing to properly disclose a payment schedule, despite the lender's argument that a reasonable borrower would have understood from the form that payments were due on the first day of every month for a period of 360 months, where the word "monthly" did not appear anywhere on the form, and the form neither listed all of the payment dates nor disclosed the payment intervals or frequency. [Washington v. Ameriquet Mortg. Co., 2006 WL 1980201 \(N.D. Ill. 2006\).](#)

5 [12 C.F.R. § 1026.18\(g\)\(2\).](#)

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§ 79. Prepayment; rebates and penalties

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West's Key Number Digest

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Forms

Forms relating to prepayment clause, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

The disclosures by a creditor in a closed-end consumer credit transaction must include a statement indicating whether or not the consumer is entitled to a rebate of any finance charge upon refinancing or prepayment in full pursuant to acceleration or otherwise if the obligation involves a precomputed finance charge.¹ The disclosure must include a statement indicating whether or not a penalty will be imposed in those same circumstances if the obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance.²

A lender is not required by the Truth in Lending Act to use any particular method of computing unearned finance charges.³

Footnotes

- 1 [15 U.S.C.A. § 1638\(a\)\(11\)](#).
Mortgagors' allegations that mortgagees charged facsimile fees, attorney document preparation fees, and recording fees at the time the mortgagors prepaid their mortgage loans and that such fees were included with the total amount "necessary" to pay off the mortgage debt were sufficient to state a claim for failure to disclose prepayment penalties. [McAnaney v. Astoria Financial Corp.](#), 357 F. Supp. 2d 578 (E.D. N.Y. 2005). A disclosure statement did not comply with the Act where it, inter alia, disclosed the right to "abatement" of prepaid interest upon early retirement of the obligation but did not indicate the method by which the unearned portion of the finance charge was to be computed and failed to disclose that the lender never intended to rebate any unearned prepaid interest. [Powers v. Sims and Levin Realtors](#), 396 F. Supp. 12 (E.D. Va. 1975), judgment aff'd in part, rev'd in part on other grounds, 542 F.2d 1216 (4th Cir. 1976) (rejected on other grounds by, [Tarplain v. Baker Ford, Inc.](#), 466 F. Supp. 1340 (D.R.I. 1979)).
- 2 [15 U.S.C.A. § 1638\(a\)\(11\)](#).
- 3 [Gantt v. Commonwealth Loan Co.](#), 573 F.2d 520 (8th Cir. 1978).

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§ 80. Prepayment; rebates and penalties—Rule of 78s

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The Rule of 78s, also known as the sum-of-the-digits method, or direct ratio method, is a shorthand means of determining the interest earned at any point in the term of a credit purchase; it uses a mathematical formula to calculate unearned finance charges on a loan in which finance charges have been precomputed.¹ The Rule works as follows: when a loan is to be repaid in monthly installments, each month of the loan's term is assigned a digit, with the first month's digit equaling the total number of months in the agreed period of the loan, the second one less, etc., and this number then serving as the denominator in a fractional equation, with the numerator being the sum of the digits for those months expired at the time of the obligation's prepayment.² Where the original loan is refinanced several times, and unearned finance charges are computed under the Rule of 78s, the lender is not required to compute and disclose unearned finance charges under a more complicated actuarial method.³

For purposes of the Truth in Lending Act, reference to the Rule of 78s in disclosure statements in a consumer loan transaction adequately identifies the method of computing any unearned portion of a finance charge in the event of prepayment in full of the obligation.⁴ A provision in a consumer loan transaction for prepayment of an obligation according to the Rule of 78s does not constitute a prepayment penalty and satisfies the requirements of the Truth in Lending Act notwithstanding the fact that the computation of unearned interest by the Rule of 78s results in a slightly smaller rebate than if the rebate were computed by the actuarial method.⁵ A disclosure statement furnished by the lender in connection with a secured loan does not violate the Act where the statement provides that rebate for prepayment in full shall be made in accordance with the Rule of 78s, while

the loan note provides for a refund in accordance with state statutes, and the State has statutorily approved the use of the Rule of 78s in credit transactions.⁶

If a consumer prepays in full the financed amount under any consumer credit transaction, including refinancing transactions, the creditor must promptly refund any unearned portion of the interest charge to the consumer,⁷ and the use of the Rule of 78s is prohibited in calculating any refund of interest.⁸

Caution:

The statute prohibiting use of the Rule of 78s in connection with mortgage refinancings and other consumer loans⁹ prohibits only the use of the Rule to calculate refunds of unearned interest after a loan has been paid in full, not use of the rule in amortizing the loan at the time of origination.¹⁰

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Footnotes

- 1 [Richardson v. Capital One, N.A.](#), 839 F. Supp. 2d 197 (D.D.C. 2012), *aff'd*, 2013 WL 6210837 (D.C. Cir. 2013).
- 2 [Bone v. Hibernia Bank](#), 493 F.2d 135 (9th Cir. 1974).
- 3 [Gantt v. Commonwealth Loan Co.](#), 573 F.2d 520 (8th Cir. 1978).
- 4 [Gillard v. Aetna Finance Co., Inc.](#), 414 F. Supp. 737 (E.D. La. 1976); [Beneficial Discount Co. v. Johnson](#), 215 Va. 582, 211 S.E.2d 571 (1975).
- 5 [Gantt v. Commonwealth Loan Co.](#), 416 F. Supp. 309 (E.D. Mo. 1976), *judgment aff'd*, 573 F.2d 520 (8th Cir. 1978).
In deriving balances owed on industrial loan and thrift companies' claims, "Rule of 78s" accounting method could not be used to calculate rebate for unmatured interest on Chapter 13 debtor's precomputed loans; Rule resulted in inaccurate approximation of actuarial rate that favored creditor-companies to detriment of debtor, the estate, and other creditors rather than true measure as required by the Bankruptcy Code; error favoring creditors could be viewed as type of penalty charge, and acceleration of debt that occurred upon filing bankruptcy petition was not analogous to prepayment situations in which Rule was properly applied. [In re McMurray](#), 218 B.R. 867 (Bankr. E.D. Tenn. 1998).
- 6 [Lefler v. Kentucky Finance Co., Inc.](#), 736 F.2d 375 (6th Cir. 1984).
- 7 15 U.S.C.A. § 1615(a).
- 8 15 U.S.C.A. § 1615(b).
- 9 15 U.S.C.A. § 1615(b).
- 10 [Richardson v. Capital One, N.A.](#), 839 F. Supp. 2d 197 (D.D.C. 2012), *aff'd*, 2013 WL 6210837 (D.C. Cir. 2013).

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§ 81. Late payment

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What constitute "default, delinquency, or similar charges payable in the event of late payments" which must be disclosed under secs. 128(a)(9) and 129(a)(7) of Truth in Lending Act (15 U.S.C.A. secs. 1638(a)(9), 1639(a)(7)) and sec. 226.8(b)(4) of Regulation Z (12 C.F.R. sec. 226.8(b)(4)), 34 A.L.R. Fed. 467

A creditor in a closed-end consumer credit transaction must disclose any dollar charge or percentage amount which may be imposed solely on account of a late payment, other than a deferral or extension charge.¹

A loan-penalty provision permitting the lender to charge a late fee of 5% of the "monthly payment" violated the Truth in Lending Act and the predecessor to 12 C.F.R. § 1026.18 since the loan provision was ambiguous as to whether, in the event of partial payment, the creditor could impose a charge of 5% of the entire installment or only of the unpaid balance of the scheduled payment.²

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Footnotes

- 1 [15 U.S.C.A. § 1638\(a\)\(10\).](#)
- 2 [In re Whitley, 772 F.2d 815 \(11th Cir. 1985\).](#)

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§ 82. Security interest

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[Validity, Construction, and Application of Truth in Lending Act \(TILA\) and Regulations Promulgated Thereunder—United States Supreme Court Cases](#), 67 A.L.R. Fed. 2d 567

[Sufficiency of description of security interest, and of identification of property to which security interest relates, under secs. 128\(a\)\(10\) and 129\(a\)\(8\) of Truth in Lending Act \(15 U.S.C.A. secs. 1638\(a\)\(10\), 1639\(a\)\(8\)\) and sec. 226.8\(b\)\(5\) of Regulation Z \(12 C.F.R. sec. 226.8\(b\)\(5\)\)](#), 32 A.L.R. Fed. 863

The creditor in a closed-end consumer credit transaction must include in its disclosures, where the credit is secured, a statement that a security interest has been taken in the property which is purchased as part of the credit transaction or property not purchased as part of the credit transaction identified by item or type.¹

The United States Supreme Court has held that a provision in a retail-installment contract assigning to the creditor the proceeds of returned or unearned insurance premiums does not describe a "security interest" under [15 U.S.C.A. § 1638\(a\)\(9\)](#).² However,

a creditor violates the statute and the regulations by failing to include in the disclosure statement a description of the security interest created by the confession of judgment or cognovit clause in the note, a description of the property subject to such security interest, and the customer's right to rescind the agreement since the confession or judgment or cognovit clause is a security interest for purposes of the Act and the regulations.³

Generally speaking, disclosures of the security interest are sufficient where clear and explicit⁴ or clear and unequivocal⁵ and insufficient where misleading and unclear.⁶

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Footnotes

- 1 [15 U.S.C.A. § 1638\(a\)\(9\)](#).
A used-car dealer violated the Truth in Lending Act where, in providing financing for the purchase of a used car, the dealer did not disclose in a clear and conspicuous manner that it took a security interest in the vehicle because such disclosure was required under [§ 1638\(a\)\(9\)](#). [Leathers v. Peoria Toyota-Volvo](#), 824 F. Supp. 155 (C.D. Ill. 1993).
A rider signed by borrowers in connection with their mortgage loans, stating that the security instrument included "goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with" the subject property, could reasonably be interpreted as creating security interests that had to be disclosed under the Truth in Lending Act (TILA), rather than creating only incidental interests that could not be disclosed, and thus, dismissal of borrowers' TILA claim against the mortgage company was not warranted. [Carye v. Long Beach Mortg. Co.](#), 470 F. Supp. 2d 3 (D. Mass. 2007).
- 2 [Anderson Bros. Ford v. Valencia](#), 452 U.S. 205, 101 S. Ct. 2266, 68 L. Ed. 2d 783 (1981).
- 3 [Nesbitt v. Blazer Financial Services, Inc.](#), 550 F. Supp. 819 (N.D. Ill. 1982).
A security interest disclosure which was hidden in fine print at the end of an indigestible chunk of legalistic boilerplate, outside of the federal box, and set apart from the lender's own statement of disclosures violated the Truth in Lending Act provision requiring disclosure of types of security interest taken by the lender, thereby warranting the imposition of statutory damages. [Van Jackson v. Check "N Go of Illinois, Inc.](#), 193 F.R.D. 544 (N.D. Ill. 2000).
- 4 [Collinwood Shale, Brick and Supply Co. v. Binder](#), 60 Ohio App. 2d 91, 14 Ohio Op. 3d 69, 395 N.E.2d 907 (8th Dist. Cuyahoga County 1978).
- 5 [St. Germain v. Bank of Hawaii](#), 413 F. Supp. 587 (D. Haw. 1976), judgment rev'd on other grounds, 573 F.2d 572 (9th Cir. 1977) and (rejected on other grounds by, [Dalton v. Bob Neill Pontiac, Inc.](#), 476 F. Supp. 789 (M.D. N.C. 1979)).
- 6 [Blackmond v. Walker-Thomas Furniture Co., Inc.](#), 428 F. Supp. 344 (D.D.C. 1977).

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§ 83. Security interest—Particular applications

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[Validity, Construction, and Application of Truth in Lending Act \(TILA\) and Regulations Promulgated Thereunder—United States Supreme Court Cases, 67 A.L.R. Fed. 2d 567](#)

The creditor is not required to list the creditor's rights as a secured party,¹ such as a seller's right of repossession,² or, where a homestead exemption is assigned, the fact that there is a statutory limitation on waiver of homestead and exemption.³ It has also been held that the assignment or waiver itself of a state homestead exemption need not be disclosed.⁴ While it has been held that a confession-of-judgment clause is not a security interest,⁵ it has also been held that a provision giving the creditor the right to confess judgment must be disclosed.⁶

The property to which the security interest relates must be clearly identified by the disclosure.⁷ Identification of the property, without an itemized list, as "household goods,"⁸ "all household goods,"⁹ and "personal property"¹⁰ has been held sufficient. However, similar identifications have also been held inadequate.¹¹

Inconsistent identifications of the property render the disclosure insufficient.¹²

A security interest in after-acquired property must be disclosed.¹³ Depending on the facts and circumstances of the case, disclosures in this regard have been held sufficient¹⁴ or insufficient.¹⁵

A question frequently arising involves the assignment by the consumer to the creditor of returned or unearned premiums on an insurance policy covering the property to which the security interest relates. The Supreme Court of the United States has held that such returned or unearned premiums do not constitute a "security interest" under the Truth in Lending Act, requiring disclosure thereof.¹⁶

Observation:

It should be noted that the present definition of "security interest" does not include incidental interests, such as interests in proceeds, accessions, additions, fixtures, insurance proceeds (whether or not the creditor is a loss payee or beneficiary), premium rebates, or interests in after-acquired property.¹⁷

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Footnotes

- 1 [Meyers v. Clearview Dodge Sales, Inc.](#), 539 F.2d 511 (5th Cir. 1976).
- 2 [Hight v. Jim Bass Ford, Inc.](#), 552 S.W.2d 490 (Tex. Civ. App. Austin 1977), writ granted, (Oct. 12, 1977) and writ withdrawn, (July 12, 1978) and writ refused n.r.e., (July 12, 1978).
- 3 [Elzea v. National Bank of Georgia](#), 570 F.2d 1248 (5th Cir. 1978).
- 4 [Cox v. First Nat. Bank of Cincinnati](#), 751 F.2d 815 (6th Cir. 1985).
- 5 [Douglas v. Beneficial Finance Co. of Anchorage](#), 469 F.2d 453 (9th Cir. 1972).
- 6 [Engle v. Shapert Const. Co.](#), 443 F. Supp. 1383 (M.D. Pa. 1978).
- 7 [Brown v. Providence Gas Co.](#), 445 F. Supp. 459 (D.R.I. 1976); [Reliable Credit Service, Inc. v. Bernard](#), 339 So. 2d 952 (La. Ct. App. 4th Cir. 1976), writ denied, 342 So. 2d 215 (La. 1977) and writ denied, 341 So. 2d 1129 (La. 1977); [SunAmerica Finance Corp. v. Williams](#), 2 Ohio App. 3d 272, 442 N.E.2d 83 (8th Dist. Cuyahoga County 1981).
- 8 [Allegations that a lender failed to disclose, in a consumer loan agreement, a security interest taken in a borrower's postdated check supported claims for violations of the Truth in Lending Act and its implementing regulation. Davis v. Cash For Payday, Inc.](#), 193 F.R.D. 518, 47 Fed. R. Serv. 3d 470 (N.D. Ill. 2000).
- 8 [Kenney v. Landis Financial Group, Inc.](#), 349 F. Supp. 939 (N.D. Iowa 1972); [Gibson v. Family Finance Corp. of Gentilly, Inc.](#), 404 F. Supp. 896 (E.D. La. 1975).

- 9 Gillard v. Aetna Finance Co., Inc., 414 F. Supp. 737 (E.D. La. 1976); Matter of Dickson, 432 F. Supp. 752 (W.D. N.C. 1977).
- 10 Garza v. Chicago Health Clubs, Inc., 347 F. Supp. 955, 16 Fed. R. Serv. 2d 820 (N.D. Ill. 1972).
- 11 Tinsman v. Moline Beneficial Finance Co., 531 F.2d 815, 18 U.C.C. Rep. Serv. 1056, 32 A.L.R. Fed. 854 (7th Cir. 1976); Madison v. United Finance Co., Inc., 571 F.2d 1125 (9th Cir. 1978); Conrad v. Beneficial Finance Co. of New York, Inc., 91 Misc. 2d 643, 398 N.Y.S.2d 499, 22 U.C.C. Rep. Serv. 1221 (Sup 1977).
- 12 Madison v. United Finance Co., Inc., 571 F.2d 1125 (9th Cir. 1978); Associates Finance, Inc. v. Cedillo, 89 Ill. App. 3d 179, 44 Ill. Dec. 828, 411 N.E.2d 1194 (2d Dist. 1980).
- 13 Southwestern Inv. Co. v. Mannix, 557 S.W.2d 755 (Tex. 1977).
- 14 Anderson v. Southern Discount Co., 582 F.2d 883 (4th Cir. 1978); Montoya v. Postal Credit Union, 630 F.2d 745 (10th Cir. 1980); Walker v. Atlantic Nat. Bank of Seminole, 489 F. Supp. 243 (M.D. Fla. 1980), judgment aff'd, 629 F.2d 1088 (5th Cir. 1980).
- 15 Matter of Garner, 556 F.2d 772 (5th Cir. 1977); Bulger v. Thorp Credit Inc. of Illinois, 609 F.2d 1255 (7th Cir. 1979); Woods v. Beneficial Finance Co. of Eugene, 395 F. Supp. 9 (D. Or. 1975).
- 16 Anderson Bros. Ford v. Valencia, 452 U.S. 205, 101 S. Ct. 2266, 68 L. Ed. 2d 783 (1981).
- 17 12 C.F.R. § 1026.2(a)(25).

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Forms

Forms relating to referral to contract document, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

A statement that the consumer should refer to the appropriate contract document for any information such document provides about nonpayment, default, the right to accelerate the maturity of the debt, and prepayment rebates and penalties must be included in a creditor's disclosures in a closed-end consumer credit transaction.¹

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Footnotes

¹ [15 U.S.C.A. § 1638\(a\)\(12\)](#).

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West's Key Number Digest

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[Validity, Construction, and Application of Truth in Lending Act \(TILA\) and Regulations Promulgated Thereunder—United States Supreme Court Cases, 67 A.L.R. Fed. 2d 567](#)

The disclosure requirements for closed-end credit transactions include a number of disclosures specific to residential mortgages.¹ Additionally, in the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a prescribed clear and conspicuous statement with respect to the deductibility of interest and charges for federal income tax purposes is required.²

Under the regulation implementing the Truth in Lending Act, certain insurance premiums excludible from the finance charge must be disclosed by the creditor if they are to be so excluded.³ Similarly, certain disclosures are required in order to exclude from the finance charge certain fees prescribed by law or certain premiums for insurance in lieu of perfecting a security interest.⁴ Thus, a creditor which charged the purchaser of an automobile \$1 to list the creditor's lien on the certificate of title was required

to disclose the \$1 fee not only in the section of the installment sales contract entitled "itemization of amount financed" but also in the space marked "filing fees."⁵

If a creditor requires a consumer to maintain a deposit as a condition of the specific transaction, it must include in its disclosure a statement that the annual percentage rate does not reflect the effect of the required deposit.⁶

A creditor need not make disclosures as to the finance charge, the payment schedule, the total of payments, or the total sale price in a transaction involving an interim credit extension under a student credit program.⁷

A misstatement by a credit union in a notice of right to cancel a loan transaction it provided to borrowers with respect to the day on which the right to cancel the transaction pursuant to the Truth in Lending Act expired, in which the credit union stated a date more than three business days following the date of the transaction, and thus actually benefited the borrowers by extending the rescission period, materially complied with the requirements of Regulation Z and thus did not result in a violation of the TILA.⁸

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Footnotes

- 1 §§ 221, 222.
- 2 15 U.S.C.A. § 1638(a)(15), (b)(3).
- 3 12 C.F.R. § 1026.18(n).
An express-mail fee does not constitute a finance charge that must be included on a lender's disclosure statement if the borrower can choose to avoid the fee by having the documents sent via regular mail; similarly, the Florida intangible tax is not a finance charge payable by the consumer as incident to extension of credit that must be included on lender's disclosure statement since the tax is prescribed by law and paid to public official for perfecting security interest. *Veale v. Citibank*, F.S.B., 85 F.3d 577 (11th Cir. 1996).
- 4 12 C.F.R. § 1026.18(o).
An arbitration agreement that did not mention arbitration costs and fees was not unenforceable on the theory that such an agreement failed to provide a Truth in Lending Act plaintiff with protection from the potentially steep costs of pursuing her federal statutory claims in the arbitral forum where plaintiff presented no evidence as to the likelihood that she would incur prohibitive costs in arbitration. *Green Tree Financial Corp.-Alabama v. Randolph*, 531 U.S. 79, 121 S. Ct. 513, 148 L. Ed. 2d 373 (2000).
- 5 *Lewis v. Award Dodge, Inc.*, 620 F. Supp. 135 (D. Conn. 1985) (citing, inter alia, 12 C.F.R. § 1026.18(o)).
- 6 12 C.F.R. § 1026.18(r).
- 7 12 C.F.R. § 1026.17(i).
- 8 *Hawaii Community Federal Credit Union v. Keka*, 94 Haw. 213, 11 P.3d 1 (2000).

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Except for refinancing, the Truth in Lending Act makes no specific provision as to disclosures after a credit transaction is consummated.¹ Subsequent disclosure requirements are made by the implementing regulation.²

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¹ 15 U.S.C.A. § 1638.

² 12 C.F.R. § 1026.20.

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§ 87. Refinancing and similar arrangements

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A refinancing is a new transaction requiring new disclosures to the consumer.¹ The new finance charge must include any unearned portion of the old finance charge that is not credited to the existing obligation.² Where the contract does not disclose whether the balance from the prior contract was refinanced, whether the finance charge is subtracted from the contract so that the new finance contract can be computed, or whether the balance is included in the computation of the new finance charge, the lack of disclosure constitutes a violation.³

The creditor in a consumer loan transaction does not violate the Truth in Lending Act by failing to itemize the amount financed, as represented by the balance due on the original loan which is being refinanced, and the amount of cash to be received by the debtors.⁴ Moreover, a consumer-loan lender has no duty under the Truth in Lending Act to disclose its alleged intent, at the time of loan refinancings, to persuade a borrower to make future loan refinancings so that the lender can earn loan-origination fees.⁵

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Footnotes

¹ 12 C.F.R. § 1026.20(a).

² 12 C.F.R. § 1026.20(a).

- 3 [Wise Furniture v. Dehning, 343 N.W.2d 26 \(Minn. 1984\).](#)
- 4 [Gillard v. Aetna Finance Co., Inc., 414 F. Supp. 737 \(E.D. La. 1976\).](#)
- 5 [Gonzales v. Associates Financial Service Co. of Kansas, Inc., 266 Kan. 141, 967 P.2d 312 \(1998\).](#)

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§ 88. Refinancing and similar arrangements—What constitutes refinancing or new transaction

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West's Key Number Digest

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A refinancing occurs when an existing obligation that was subject to disclosure requirements is satisfied and replaced by a new obligation undertaken by the same consumer.¹ However, the following are not treated as a refinancing:

- a renewal of a single payment obligation with no change in the original terms²
- a reduction in the annual percentage rate with a corresponding change in the payment schedule³
- an agreement involving a court proceeding⁴
- a change in the payment schedule or in collateral requirements as a result of the consumer's default or delinquency, unless the percentage rate is increased, or the new amount financed exceeds the unpaid balance plus earned finance charge and premiums for continuation of specified types of insurance⁵
- the renewal of optional insurance purchased by the consumer and added to an existing transaction, if disclosures relating to the initial purchase were provided⁶
- a loan's conversion from construction to permanent status⁷

Also, "subsequent loan agreements" entered into by a pledgor and a pawnshop following their execution of an original pawn ticket does not constitute a "refinancing," and so requires no new disclosures, where there was no cancellation of the original pawn obligation, the original pawn ticket was renewed and extended, the maturity date was deferred, and the original pawn ticket survived deferral and was never cancelled.⁸

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Footnotes

- | | |
|---|--|
| 1 | 12 C.F.R. § 1026.20(a). |
| 2 | 12 C.F.R. § 1026.20(a)(1). |
| 3 | 12 C.F.R. § 1026.20(a)(2). |
| 4 | 12 C.F.R. § 1026.20(a)(3). |
| 5 | 12 C.F.R. § 1026.20(a)(4), referring to the types of insurance described in 12 C.F.R. § 1026.4(d). |
| 6 | 12 C.F.R. § 1026.20(a)(5). |
| 7 | In re Washington, 455 B.R. 344 (Bankr. D. Mass. 2011). |
| 8 | In re Gunn, 387 B.R. 856 (M.D. Ala. 2008), <i>aff'd</i> , 317 Fed. Appx. 883 (11th Cir. 2008). |

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§ 89. Assumptions

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 50

An assumption occurs when a creditor expressly agrees in writing with a subsequent consumer to accept that consumer as a primary obligor on an existing residential mortgage transaction.¹ Before the assumption occurs, the creditor must make new disclosures to the subsequent consumer, based on the remaining obligation.² However, the creditor is required to make only specified disclosures if the finance charge originally imposed on the existing obligation was an add-on or discount finance charge.³

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Footnotes

- ¹ 12 C.F.R. § 1026.20(b).
- ² 12 C.F.R. § 1026.20(b).
- ³ 12 C.F.R. § 1026.20(b), requiring that the creditor disclose: (1) the unpaid balance of the obligation assumed; (2) the total charges imposed by the creditor in connection with the assumption; (3) the information required to be disclosed under 12 C.F.R. § 1026.18(k) to (n); (4) the annual percentage rate originally imposed on the obligation; and (5) the payment schedule under 12 C.F.R. § 1026.18(g) and the total of payments under 12 C.F.R. § 1026.18(h) based on the remaining obligation.

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West's Key Number Digest, Consumer Credit  35, 61.1, 68


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A.L.R. Index, Consumer Protection

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A.L.R. Index, Truth in Lending

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  35

The Truth in Lending Act regulates credit advertising.¹ The term "advertisement" means a commercial message in any medium that promotes, directly or indirectly, a credit transaction.² The term "advertisement" includes only traditional notices offering goods or services for sale and does not include the retail-installment contract.³

A catalog or other multiple-page advertisement is considered a single advertisement if it clearly and conspicuously displays a credit-terms table on which the information required to be stated in credit advertising is clearly set forth.⁴

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Footnotes

- ¹ 15 U.S.C.A. §§ 1661 to 1665b.
- ² 12 C.F.R. § 1026.2(a)(2).
- ³ *Garza v. Chicago Health Clubs, Inc.*, 329 F. Supp. 936 (N.D. Ill. 1971).
- ⁴ 15 U.S.C.A. § 1661.
The implementing regulations are 12 C.F.R. §§ 1026.16(c), 1026.24(d).

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§ 91. Installments and down payments

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 35

No advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit may state that a specific periodic consumer credit amount or installment amount can be arranged unless the creditor usually and customarily arranges credit payments or installments for that period and in that amount.¹ Similarly, an advertisement that a specified down payment is required in connection with any extension of consumer credit is prohibited unless the creditor usually and customarily arranges down payments in that amount.²

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Footnotes

- ¹ 15 U.S.C.A. § 1662(1).
Regulations requiring that advertised credit terms be actually available are at 12 C.F.R. §§ 1026.16(a), 1026.24(a).
- ² 15 U.S.C.A. § 1662(2).

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§ 92. Open-end and closed-end credit plans

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 35

Advertisements to aid, promote, or assist directly or indirectly the extension of consumer credit under an open-end credit plan¹ may not set forth any of the specific terms of the plan unless it also clearly and conspicuously sets forth all of the following items: (1) any minimum or fixed amount that could be imposed; (2) in any case in which periodic rates may be used to compute the finance charge, the periodic rates expressed as annual percentage rates; and (3) any other term that the Bureau of Consumer Financial Protection may, by regulation, require to be disclosed.²

Under the provisions of the Truth in Lending Act regulating the advertising of credit in closed-end credit plans,³ if any advertisement states the rate of a finance charge, the advertisement must state the rate of that charge expressed as an annual percentage rate.⁴ Furthermore, if the advertisement states the amount of any down payment, the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment, then the advertisement must state all of the following: (1) the down payment, if any; (2) the terms of repayment; and (3) the rate of the finance charge expressed as an annual percentage rate.⁵ Additional requirements apply to certain advertisements that relate to a consumer credit transaction secured by the principal dwelling of a consumer in which the extension of credit may exceed the fair market value of the dwelling.⁶ The provision governing closed-end credit plans applies to any advertisement to aid, promote, or assist directly or indirectly any consumer credit sale, loan, or other extension of credit subject to the provisions of the Act, other than an open-end credit plan⁷ and other than advertisements of residential real estate, except to the extent that the Bureau of Consumer Financial Protection may require by regulation.⁸

Footnotes

- 1 §§ 31 to 60.
 - 2 15 U.S.C.A. § 1663, implemented by 12 C.F.R. § 1026.16.
 - 3 §§ 61 to 89.
 - 4 15 U.S.C.A. § 1664(c).
 - 5 15 U.S.C.A. § 1664(d).
 - 6 15 U.S.C.A. § 1664(e).
 - 7 15 U.S.C.A. § 1664(a).
 - 8 15 U.S.C.A. § 1664(b).
- The implementing regulation is 12 C.F.R. § 1026.24.

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§ 93. Home equity loans

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 35

If any advertisement to aid, promote, or assist, directly or indirectly, the extension of consumer credit through an open-end consumer plan under which extensions of credit are secured by the consumer's principal dwelling states, affirmatively or negatively, any of the specific terms of the plan, including any periodic payment amount, the advertisement must also clearly and conspicuously set forth the following information:

- (1) any loan fee, the amount of which is determined as a percentage of the credit limit applicable to an account under the plan and an estimate of the aggregate amount of other fees for opening the account, based on the creditor's experience with the plan, stated as a single amount or a reasonable range;¹
- (2) in any case in which periodic rates may be used to compute the finance charge, the periodic rates expressed at an annual percentage rate;²
- (3) the highest annual percentage rate that may be imposed under the plan;³ and
- (4) any other information that the Bureau of Consumer Financial Protection may require by regulation.⁴

Any statement in an advertisement for an open-end home equity loan plan that any interest expense incurred with respect to the plan is or may be tax deductible may not be misleading.⁵ Each advertisement for an open-end home equity loan plan that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, must include a clear and conspicuous statement that: (1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is

not tax deductible for federal income tax purposes; and (2) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.⁶

No advertisement with respect to any home equity account may refer to the loan as "free money" or use other terms determined by the Bureau of Consumer Financial Protection by regulation to be misleading.⁷

If an advertisement includes an initial annual percentage rate that is not determined by the index or formula used to make later interest rate adjustments, the advertisement must also state—with equal prominence—the current annual percentage rate that would have been applied using the index or formula had the initial rate not been offered.⁸ The annual percentage rate to be disclosed must be current as of a reasonable time, given the media involved.⁹ Any advertisement to which the statute applies must also state the period during which the initial annual percentage rate will be in effect.¹⁰

Any advertisement relating to a home equity loan that contains a statement regarding the minimum monthly payment under the plan must also disclose, if applicable, the fact that the plan includes a balloon payment.¹¹ The term "balloon payment" means, in this context, any repayment option under which the account holder is required to repay the entire amount of any outstanding balance as of a specified date or at the end of a specified period of time, as determined in accordance with the terms of the agreement under which the credit is extended if the aggregate amount of the minimum periodic payments required would not fully amortize the outstanding balance by that date or at the end of that period.¹²

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Footnotes

- | | |
|----|---|
| 1 | 15 U.S.C.A. § 1665b(a)(1). |
| 2 | 15 U.S.C.A. § 1665b(a)(2). |
| 3 | 15 U.S.C.A. § 1665b(a)(3). |
| 4 | 15 U.S.C.A. § 1665b(a)(4), implemented by 12 C.F.R. § 1026.16(d). |
| 5 | 15 U.S.C.A. § 1665b(b)(1). |
| 6 | 15 U.S.C.A. § 1665b(b)(2). |
| 7 | 15 U.S.C.A. § 1665b(c). |
| 8 | 15 U.S.C.A. § 1665b(d)(1). |
| 9 | 15 U.S.C.A. § 1665b(d)(2). |
| 10 | 15 U.S.C.A. § 1665b(d)(3). |
| 11 | 15 U.S.C.A. § 1665b(e). |
| 12 | 15 U.S.C.A. § 1665b(f). |

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§ 94. Use of annual percentage rate in oral disclosures

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 35

When responding orally to any inquiry about the cost of credit, a creditor, regardless of the method used to compute finance charges, must state rates only in terms of the annual percentage rate.¹ An exception in the case of an open-end credit plan² is that the periodic rate also may be stated, and in the case of any other open-end credit plan where a major component of the finance charge consists of interest computed at a simple annual rate, the simple annual rate also may be stated.³ The Bureau of Consumer Financial Protection is authorized to adopt regulations in this regard.⁴

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Footnotes

- 1 [15 U.S.C.A. § 1665a.](#)
- 2 [As to determination of the annual percentage rate, see 15 U.S.C.A. § 1606\(a\), \(b\).](#)
- 3 [§§ 31 to 60.](#)
- 4 [15 U.S.C.A. § 1665a.](#)
- 5 [15 U.S.C.A. § 1665a, implemented by 12 C.F.R. § 1026.26.](#)

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§ 95. Enforcement and liabilities

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[Civil remedies of consumer for violations of Truth in Lending Act \(15 USC secs. 1601-1644, 1661-1665\), 11 A.L.R. Fed. 815 \(sec. 4 superseded in part by Civil remedies of consumer for violations of credit transactions provisions of Truth in Lending Act \(TILA\) \(15 U.S.C.A. secs. 1601 et seq.\), as amended by Truth in Lending Simplification and Reform Act of 1982, 113 A.L.R. Fed. 173\)](#)

The credit advertising provisions of the Truth in Lending Act may be enforced administratively¹ and by criminal sanctions.² However, there is authority that the Act provides no private, civil relief for violations of the credit advertising provisions.³ In any event, a purchaser can not show a violation of either the credit advertisement provisions of the Truth in Lending Act or the implementing regulations where he or she fails to present any advertisement claimed to have been read by him or her and which violated the Act or regulation.⁴

No liability is imposed under the credit advertising provisions on the part of any owner or personnel of any medium in which an advertisement appears or through which it is disseminated.⁵

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Footnotes

- 1 [Jordan v. Montgomery Ward & Co.](#), 442 F.2d 78, 11 A.L.R. Fed. 808 (8th Cir. 1971).
As to administrative enforcement under [15 U.S.C.A. § 1607](#), see §§ [109](#) to [112](#).
- 2 [15 U.S.C.A. § 1611](#), discussed in § [142](#).
- 3 [Jordan v. Montgomery Ward & Co.](#), 442 F.2d 78, 11 A.L.R. Fed. 808 (8th Cir. 1971).
- 4 [Hearns v. Parisi](#), 548 F. Supp. 2d 132 (M.D. Pa. 2008).
- 5 [15 U.S.C.A. § 1665](#).

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